



Durham North Carolina

Unified Development Ordinance



Effective

January 1, 2006

Amended

Durham County: May 22, 2017

City of Durham: June 5, 2017

How to Use this Code

IF YOU OWN PROPERTY AND WANT TO KNOW WHAT RULES APPLY:

- STEP 1:** Find your zoning district and any overlay districts by looking at the Official Zoning Map (found in the Planning Department).
- STEP 2:** Go to Article 4, Zoning Districts, to review the intent of the district(s) applied to your property.
- STEP 3:** Go to the Use Table in Article 5, Use Regulations for details on uses permitted on your property. If the use is listed with Notes in the right-hand column, read those notes for additional use standards that may apply.
- STEP 4:** For details on density, minimum lot size and required yards, see Article 6, District Intensity Standards. Development may also subject to the general development standards in Articles 7 through 13.
- STEP 5:** Don't forget the overlay districts that apply to your property, if any. See Article 4, Zoning Districts.

IF YOU WANT TO BUILD OR ESTABLISH A PARTICULAR USE:

- STEP 1:** Go to the Use Table in Article 5, Use Regulations for details on uses permitted on your property. If the use is listed with Notes in the right-hand column, read those notes for additional use standards that may apply. If you do not see your use listed, check the most appropriate use category in Article 5, Sec. 5.2.
- STEP 2:** For details on density, minimum lot size and required yards, see Article 6, District Intensity Standards. Development may also subject to the general development standards in Articles 7 through 13.

IF YOU WANT TO CHANGE YOUR ZONING DISTRICT:

Only the City Council or Board of Commissioners, as appropriate, may rezone property – following public notice and hearings. See Article 3, Sec. 3.5, Zoning Map Change for details on the procedure.

IF YOU WANT TO SUBDIVIDE YOUR PROPERTY:

Property can only be subdivided in accordance with the procedure in Article 3, Sec. 3.6, Subdivision Review.

UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS			
Case Number	Title	County Effective Date	City Effective Date
TC05-04	Flood Damage Protection Standards	4/24/2006	5/6/2006
TC06-05	Sedimentation and Erosion Control	6/26/2006	6/19/2006
TC06-04	Technical Changes I	7/24/2006	8/7/2006
TC06-07	Nonconformities	10/10/2006	12/4/2006
TC06-10	Septic Tank Lot Sizes	11/27/2006	12/4/2006
TC06-02	I-85 Major Transportation Corridor Overlay	11/27/2006	12/4/2006
TC06-11	Temporary Use Timeframes	11/27/2006	12/4/2006
TC06-19	Chainlink Fencing	1/8/2007	1/2/2007
TC06-12	Swimming Pool Fencing	1/22/2007	1/16/2007
TC06-16	RS-M Revisions	1/22/2007	1/16/2007
TC06-06	Technical Changes II	1/22/2007	2/19/2007
TC06-20	Animated or Motion Signs	5/28/2007	5/21/2007
TC06-13	Outdoor Lighting Standards	6/25/2007	6/18/2007
TC06-18	Technical Changes III	6/25/2007	7/19/2007
TC07-09	FIRM Technical Changes	7/23/2007	7/19/2007
TC07-05	Floodplain Fill	8/13/2007	8/6/2007
TC07-07	Final Plat Approval	9/10/2007	9/4/2007
TC07-08	Limitations on Nonconforming Uses	N/A	10/1/2007
TC07-06	Portable On-Site Storage	10/8/2007	10/1/2007
TC07-03	Vehicle Stacking	10/8/2007	10/1/2007
TC07-04	Open Space	11/26/2007	12/17/2007
TC07-16	Conservation Subdivision Technical Change	1/28/2007	2/4/2008
TC07-13	Technical Changes IV	3/10/2008	3/17/2008
TC07-20	Sidewalks	3/24/2008	4/7/2008
TC06-08	Tuscaloosa-Lakewood Neighborhood Protection Overlay	N/A	4/21/2008
TC08-02	FIRM Update	5/12/2008	5/5/2008
TC07-17	Driveway Names	6/9/2008	6/2/2008
TC07-21	Stormwater	6/9/2008	6/2/2008
TC07-18	Commercial Neighborhood Minor Special Use Permit	7/28/2008	8/4/2008
TC08-01	IL/Compact Neighborhood Height	11/24/2008	6/16/2008

UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS			
Case Number	Title	County Effective Date	City Effective Date
TC07-19	Conservation Subdivisions	11/24/2008	12/1/2008
TC08-03	Carnival Hours	11/24/2008	12/1/2008
TC08-08	Public Notice	11/24/2008	12/1/2008
TC08-04	Unattended Clothing Donation Containers	--	1/5/2009
TC08-05	Beekeeping	1/12/2009	1/5/2009
TC08-06	Female Chickens	n/a	2/16/2009
Tc07-10	Development Plans	3/23/2009	3/16/2009
Tc07-15	Hotel Location	3/23/2009	3/16/2009
TC09-01	Outdoord Recreation	6/8/2009	6/15/2009
TC09-03	Technical Changes V	6/8/2009	6/15/2009
TC09-04	Compact Neighborhood Tier Parking	8/10/2009	8/3/2009
TC09-06	Historic Landmark Criteria	10/26/2009	10/19/2009
TC09-07	Sedimentation and Erosion Control	11/23/2009	12/7-2009
TC07-01	Downtown Zoning Update	3/22/2010	2/1/2010
TC10-01	Bicycle Parking and Alternative Pedestrian Plans	8/9/2010	8/16/2010
TC09-08	Riparian Buffers	11/8/2010	11/4/2010
TC10-04	Technical Changes VI	12/13/2010	12/6/2010
TC10-03	Tree Protection	4/11/2011	3/21/2011
TC10-07	Riparian Buffers Technical Revision	4/11/2011	3/21/2011
TC11-01	Broadcast Towers	5/9/11	5/16/11
TC10-05	SRP Utilities	6/13/2011	6/20/2011
TC10-06	Commercial Infill (West Chapel Hill Street)	6/27/2011	6/20/2011
TC10-05	CN Tier DD (Ninth Street)	3/12/2012	1/17/2012
TC11-03	Fences	3/12/2012	3/19/2012
TC11-15	University College 2	10/22/2012	9/4/2012
TC12-01	Technical Changes VII	9/24/2012	9/17/2012
TC11-09	Signs	9/24/2012	10/01/2012
TC12-04	EAR-FLUM Procedural Changes	10/22/2012	11/05/2012
TC12-02	Science Research Park Amendments	12/10/2012	12/03/2012
TC12-06	Electronic Gaming Operations	12/10/2012	12/03/2012
TC12-07	Paintball or similar Recreation Facilities on Natural Sites	12/10/2012	12/03/2012

UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENTS			
Case Number	Title	County Effective Date	City Effective Date
TC11-14	Outdoor Recreation and Activity in the Downtown Design Districts	12/10/2012	11/05/2012
TC12-03	Downtown Signs and Other General Sign Standards	12/10/2012	11/05/2012
TC12-09	Modular School Classroom Units	2/25/2013	2/18/2013
TC12-10	Urban Growth Area (UGA)	2/25/2013	1/22/2013
TC12-11	Family Care and Group Home	2/25/2013	1/22/2013
TC12-05	Farmers' Markets and Crop Production	4/22/2013	3/18/2013
TC11-07	Removal of Discretionary Regulations	12/1/2013	6/1/2013
TC12-12	Density-Article 6	2/3/2014	2/10/2014
TC13-03	Watershed Protection Overlay - Rural Villages	3/24/2014	5/19/2014
TC13-01	Technical Changes VIII	9/1/2014	9/1/2014
TC13-02	Tree Coverage Calculation	--	11/17/2014
TC14-02	IL Buffer	12/1/2014	12/1/2014
TC12-13	Wireless Communication Facilities (WCF)	6/1/2015	6/1/2015
TC14-05	Independent Living Facilities	7/1/2015	7/1/2015
TC15-03	Affordable Housing Parking and Density Bonus	9/1/2015	9/1/2015
TC15-04	Riparian Buffer Setback and Lot of Record	8/10/2015	8/3/2015
TC14-06	SRP-C	9/28/2015	n/a
TC15-05	Accessory Structures-Home Occupations	9/28/2015	10/5/2015
TC15-01	Omnibus Changes 9	3/28/2016	3/14/2016
TC15-02	UDO Graphics	6/27/2016	6/20/2016
TC15-06	Reasonable Accommodations	6/27/2016	6/20/2016
TC15-07	Technical Changes due to Legislation and Court Ruling	7/1/2016	7/1/2016
TC16-01	Technical Revisions to WCF Regulations	1/1/2017	1/12/2017
TC16-04	Historic Preservation and Other General Process Changes	1/1/2017	1/1/2017
TC16-06	Amends §§ 9.5.1 and 16.3, mass grading buffers	5/22/2017	5/1/2017
TC17-03	Adds abbreviation to § 16.2 and definition to § 16.3; amends §§ 4.8.2, 4.8.3 and 4.8.4, airport overlay district	5/22/2017	6/5/2017
TC17-04	Amends § 5.5.2l, temporary outdoor sales	5/22/2017	6/5/2017

Table of Contents

ARTICLE 1 GENERAL	1-1
Sec. 1.1 Short Title	1-1
Sec. 1.2 Purpose and Intent	1-1
Sec. 1.3 Authority	1-2
Sec. 1.4 Jurisdiction	1-2
Sec. 1.5 Relationship to Adopted Plans	1-2
Sec. 1.6 Minimum Requirements; Documents Incorporated by Reference	1-3
Sec. 1.7 Conflict	1-3
Sec. 1.8 Effective Date	1-3
Sec. 1.9 Severability	1-3
Sec. 1.10 Transitional Provisions	1-4
ARTICLE 2 REVIEW AUTHORITY	2-1
Sec. 2.1 Governing Bodies	2-1
Sec. 2.2 Joint City-County Planning Committee (JCCPC)	2-2
Sec. 2.3 Planning Commission	2-3
Sec. 2.4 Board of Adjustment (BOA)	2-5
Sec. 2.5 Historic Preservation Commission (HPC)	2-7
Sec. 2.6 Other Advisory Bodies	2-10
Sec. 2.7 Durham City-County Planning Department	2-11
Sec. 2.8 Durham City-County Inspections Department	2-13
Sec. 2.9 Other Departments	2-14
Sec. 2.10 Summary of Review Authority	2-14
ARTICLE 3 APPLICATIONS AND PERMITS	3-1
Sec. 3.1 Interpretation of this Ordinance	3-1
Sec. 3.2 Common Review Procedures	3-3
Sec. 3.3 Traffic Impact Analysis (TIA)	3-12
Sec. 3.4 Comprehensive Plan Adoption/Amendment	3-14
Sec. 3.5 Zoning Map Change	3-18
Sec. 3.6 Subdivision Review	3-34
Sec. 3.7 Site Plan Review	3-42
Sec. 3.8 Sedimentation and Erosion Control	3-46
Sec. 3.9 Special Use Permit	3-51
Sec. 3.10 Sign Permit	3-58
Sec. 3.11 Common and Way-Finding Signage Plans	3-60
Sec. 3.12 Temporary Use Permit	3-62
Sec. 3.13 Home Occupation Permit	3-64
Sec. 3.14 Variance	3-65
Sec. 3.15 Appeal of Administrative Decision	3-68
Sec. 3.16 Historic District or Landmark Designation	3-70
Sec. 3.17 Certificate of Appropriateness	3-78
Sec. 3.18 Demolition by Neglect (City Only)	3-84
Sec. 3.19 Text Amendment	3-89
Sec. 3.20 Statutory Vested Rights Determination	3-93
Sec. 3.21 Floodplain Development Permit	3-96
Sec. 3.22 Limited Agriculture Permit (City Only)	3-102
Sec. 3.23 Architectural Review	3-104
Sec. 3.24 Reasonable Accommodation	3-105

ARTICLE 4 ZONING DISTRICTS	4-1
Sec. 4.1 General	4-1
Sec. 4.2 Residential District Intent Statements.....	4-6
Sec. 4.3 Nonresidential District Intent Statements.....	4-8
Sec. 4.4 Planned District Intent Statements	4-10
Sec. 4.5 Design District Intent Statements.....	4-12
Sec. 4.6 Neighborhood Protection Overlay (-P)	4-13
Sec. 4.7 Transitional Office Overlay (-TO)	4-17
Sec. 4.8 Airport Overlay (-A60, -A65)	4-19
Sec. 4.9 Major Transportation Corridor Overlay (-MTC).....	4-21
Sec. 4.10 Historic Districts Overlay (-H)	4-24
Sec. 4.11 Watershed Protection Overlay	4-26
ARTICLE 5 USE REGULATIONS	5-1
Sec. 5.1 Use Table	5-1
Sec. 5.2 Use Categories	5-9
Sec. 5.3 Limited Use Standards	5-27
Sec. 5.4 Accessory Uses and Structures	5-63
Sec. 5.5 Temporary Uses.....	5-73
ARTICLE 6 DISTRICT INTENSITY STANDARDS	6-1
Sec. 6.1 District Intensity in General	6-1
Sec. 6.2 Residential Rural (RR) Development Intensity.....	6-3
Sec. 6.3 Residential Suburban (RS) Development Intensity	6-9
Sec. 6.4 Residential Urban (RU) Development Intensity.....	6-12
Sec. 6.5 Residential Compact (RC) Development Intensity.....	6-15
Sec. 6.6 Affordable Housing Bonus	6-17
Sec. 6.7 Cluster Subdivision	6-19
Sec. 6.8 Infill Development in Residential Districts.....	6-20
Sec. 6.9 Nonresidential and Group Living Development in Residential Districts.....	6-24
Sec. 6.10 Nonresidential District and Group Living Development Intensity	6-26
Sec. 6.11 Planned Districts	6-37
Sec. 6.12 Design Districts	6-54
Sec. 6.13 Measurement and Computation	6-82
ARTICLE 7 DESIGN STANDARDS	7-1
Sec. 7.1 Housing Types.....	7-1
Sec. 7.2 Open Space	7-13
Sec. 7.3 Design Standards	7-18
Sec. 7.4 Outdoor Lighting.....	7-19
Sec. 7.5 Outdoor Display and Storage.....	7-22
Sec. 7.6 Utility and Solid Waste Collection Facilities.....	7-24
Sec. 7.7 Flagpoles and Flags	7-26
Sec. 7.8 General Performance Standards	7-28
ARTICLE 8 ENVIRONMENTAL PROTECTION	8-1
Sec. 8.1 Purpose.....	8-1
Sec. 8.2 Exemptions from Environmental Protection Standards.....	8-2
Sec. 8.3 Tree Protection and Tree Coverage.....	8-3
Sec. 8.4 Floodplain and Flood Damage Protection Standards	8-11
Sec. 8.5 Riparian Buffer Protection Standards.....	8-22
Sec. 8.6 Water Supply Reservoir Buffer	8-45
Sec. 8.7 Watershed Protection Overlay Standards.....	8-46
Sec. 8.8 Steep Slope Protection Standards	8-52

Sec. 8.9	Wetlands Protection Standards.....	8-54
Sec. 8.10	Durham Inventory Site Protection Standards.....	8-55
ARTICLE 9 LANDSCAPING AND BUFFERING		9-1
Sec. 9.1	General	9-1
Sec. 9.2	Landscape Design	9-2
Sec. 9.3	Existing Vegetation Credits for Required Landscaping	9-6
Sec. 9.4	Project Boundary Buffers.....	9-7
Sec. 9.5	Mass Grading Buffers and Revegetation	9-17
Sec. 9.6	Street Trees	9-19
Sec. 9.7	Screening	9-22
Sec. 9.8	Vehicular Use Area Landscaping.....	9-24
Sec. 9.9	Fences and Walls	9-29
Sec. 9.10	Installation and Maintenance.....	9-34
Sec. 9.11	Extensions.....	9-35
ARTICLE 10 PARKING AND LOADING		10-1
Sec. 10.1	Purpose.....	10-1
Sec. 10.2	General Requirements.....	10-2
Sec. 10.3	Required Parking	10-4
Sec. 10.4	Design Standards	10-13
Sec. 10.5	Vehicle Stacking	10-24
Sec. 10.6	Loading Areas	10-26
ARTICLE 11 SIGN STANDARDS.....		11-1
Sec. 11.1	General	11-1
Sec. 11.2	General Requirements for Signs	11-2
Sec. 11.3	Prohibited Signs	11-7
Sec. 11.4	Signs Allowed in All Districts without a Permit.....	11-10
Sec. 11.5	Signs Allowed in Right-of-Way.....	11-16
Sec. 11.6	Signs Requiring Permits	11-18
Sec. 11.7	Landmark Signs.....	11-27
Sec. 11.8	Elements of Common and Way-Finding Signage Plans	11-28
ARTICLE 12 INFRASTRUCTURE AND PUBLIC IMPROVEMENTS		12-1
Sec. 12.1	Improvement Requirements	12-1
Sec. 12.2	Ingress and Egress Requirements.....	12-3
Sec. 12.3	Streets.....	12-5
Sec. 12.4	Pedestrian and Bicycle Mobility	12-10
Sec. 12.5	Recreation Land	12-14
Sec. 12.6	Railroad Corridors.....	12-15
Sec. 12.7	Water and Sanitary Sewer Systems.....	12-16
Sec. 12.8	Stormwater Management	12-18
Sec. 12.9	Other Utilities	12-19
Sec. 12.10	Sedimentation and Erosion Control	12-20
Sec. 12.11	Performance Guarantees	12-29
ARTICLE 13 ADDITIONAL REQUIREMENTS FOR SUBDIVISIONS		13-1
Sec. 13.1	Preservation of Significant Features.....	13-1
Sec. 13.2	Consistency with Public Plans and Policies.....	13-2
Sec. 13.3	Naming of Subdivisions.....	13-3
Sec. 13.4	Block Standards	13-4
Sec. 13.5	Lot Standards.....	13-5
Sec. 13.6	Street Connectivity Requirements.....	13-6

Sec. 13.7	On-Site Wastewater Disposal Standards	13-8
Sec. 13.8	Ownership Alternatives	13-9
ARTICLE 14 NONCONFORMITIES.....		14-1
Sec. 14.1	General	14-1
Sec. 14.2	Nonconforming Uses	14-3
Sec. 14.3	Nonconforming Lots	14-6
Sec. 14.4	Nonconforming Improvements and Structures.....	14-8
ARTICLE 15 ENFORCEMENT		15-1
Sec. 15.1	Violations; Violators.....	15-1
Sec. 15.2	Determination of Violation.....	15-3
Sec. 15.3	Remedies; Enforcement Action	15-4
Sec. 15.4	Penalties	15-6
Sec. 15.5	Sedimentation and Erosion Control Enforcement and Penalties	15-8
Sec. 15.6	Floodplain and Flood Damage Protection Enforcements and Penalties	15-12
Sec. 15.7	Inspections and Investigations	15-14
Sec. 15.8	Riparian Buffer Protection Enforcement	15-15
ARTICLE 16 DEFINITIONS		16-1
Sec. 16.1	Word Usage	16-1
Sec. 16.2	Abbreviations.....	16-2
Sec. 16.3	Defined Terms	16-4

Article 1 | General

Sec. 1.1 Short Title

This ordinance shall be known as the "Durham City-County Unified Development Ordinance," and may be referred to as "this UDO" or "this Ordinance."

Sec. 1.2 Purpose and Intent

1.2.1 It is the purpose of this Ordinance to promote the health, safety and general welfare of the residents of Durham City and County.

1.2.2 In support of these purposes, this Ordinance contains regulations designed to:

- A.** Protect existing neighborhoods, preventing their decline and promoting their livability;
- B.** Address future needs, growth, and change in the jurisdiction;
- C.** Conserve land and water resources;
- D.** Preserve groundwater quality and supply;
- E.** Recognize geologic features, soil and topography;
- F.** Improve air quality;
- G.** Minimize congestion in the streets and reduce reliance on automobiles by providing options for walking, bicycling, and transit use;
- H.** Secure safety from fire and other dangers;
- I.** Provide adequate light and air;
- J.** Prevent overcrowding of land and undue concentrations of population;
- K.** Provide adequate transportation, water supplies, sewer service, schools, parks, open space, and public facilities;
- L.** Conserve the value of buildings;
- M.** Examine the most appropriate use of the land;
- N.** Regulate the location of business and industry;
- O.** Regulate the height and bulk of buildings;
- P.** Protect the capacity of floodways and non-encroachment areas in order to prevent loss or damage to homes or property;
- Q.** Regulate the area of yards and open spaces for buildings;
- R.** Provide for the needs of agriculture;
- S.** Protect historic sites and areas;
- T.** Encourage an aesthetically attractive community;
- U.** Encourage the development of affordable housing;

- V. Promote equity and socio-economic diversity; and
- W. Prevent secondary effects from land uses that could negatively impact nearby land uses, consistent with prior ordinances restricting such uses and evidence supporting such restrictions.

1.2.3 It is also the purpose of this Ordinance to provide for the orderly, efficient and economic development of the City and County by providing for:

- A. The coordination of streets, highways and other public facilities within proposed subdivisions with existing or planned streets and highways or other public facilities;
- B. The dedication or reservation of rights-of-way, easements or sites for streets, utilities, open space, recreation areas, and other public facilities;
- C. The protection of historic resources and the natural environment; and
- D. The distribution of population and traffic which shall avoid congestion and overcrowding and which shall create conditions essential to public health, safety and the general welfare.

1.2.4 The purpose and intent statements described above shall not be construed as Ordinance regulations, but as the purpose and intent for the regulations within the subsequent articles and sections of the Ordinance.

Sec. 1.3 Authority

The authority to adopt and enforce this Ordinance is granted by the Charter of the City of Durham, by Chapter §160A, Article 19 of the North Carolina General Statutes as to the City of Durham, and by Chapter §153A, Article 18 of the North Carolina General Statutes as to the County of Durham, and any other applicable general or special statutes of the State of North Carolina including Chapter 4 of Title 15A of the North Carolina Administrative Code.

Sec. 1.4 Jurisdiction

The provisions of this Ordinance shall apply to all properties within the jurisdiction of the County or the City and shall govern development and use of the land. No building shall be erected or structurally altered nor shall any land development activity take place, unless it conforms to the provisions of this Ordinance. Uses of property shall be limited by the provisions of this Ordinance.

Sec. 1.5 Relationship to Adopted Plans

The Comprehensive Plan adopted by the governing bodies indicates desired development at various levels of intensity. This Ordinance is intended to implement the Comprehensive Plan, therefore the Plan should be used as a guide for the application of this Ordinance to land within the areas covered, as well as for the provision of public services.

Sec. 1.6 Minimum Requirements; Documents Incorporated by Reference

- 1.6.1** The provisions of this Ordinance are intended to be minimum requirements. Where the provisions of this Ordinance impose greater restrictions than other ordinances, the provisions of this Ordinance shall prevail. Where the provisions of another ordinance impose greater restrictions, the other ordinance shall prevail.
- 1.6.2** Unless otherwise stated within this Ordinance, references within this Ordinance to manuals, guides, and other similar documents shall refer to the most recent edition or version of the referenced document that has been accepted or adopted for usage by the entity, department, or agency charged with responsibility for the referenced document.

Sec. 1.7 Conflict

These regulations are not intended to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other public laws, ordinances, or regulations, except as specified in Sec. 1.8, Effective Date. Where these regulations conflict with other provisions of public law and regulations, the more stringent requirements shall apply.

Sec. 1.8 Effective Date

- 1.8.1** This Ordinance is effective within each jurisdiction as of January 1, 2006. All ordinances in conflict are hereby repealed to the extent of their inconsistency. The ordinances repealed are the following:
- A.** Durham City Code Chapter 24, Zoning;
 - B.** Durham City Code, Chapter 19, Subdivisions;
 - C.** Durham County Code of Ordinances Appendix A, Durham City-County Zoning Ordinance;
 - D.** Durham County Code of Ordinances Appendix B, City-County Subdivision Ordinance;
 - E.** All other ordinances or parts of ordinances which are in conflict with this Ordinance including, but not limited to, Sections 4-2, 4-3, 4-6, 4-7, 4-8, 5-5, 5-7, 5-8, 12-6, and 23-82 of the Durham City Code, and sections 14-51 through 14-71 (the Sedimentation and Erosion Control Ordinance) of the Durham County Code are repealed to the extent necessary to give this Ordinance full force and effect.
- 1.8.2** Notwithstanding the above, the provisions of Sec. 1.10, Transitional Provisions, shall govern the completion of approved permits, development plans, plats and other approvals specified therein, or completed applications for the same. Vested rights shall be determined in accordance with Sec. 3.20, Statutory Vested Rights Determination.

Sec. 1.9 Severability

Should any section or provision of this Ordinance be declared invalid, the remaining sections or provisions shall remain valid.

Sec. 1.10 Transitional Provisions

1.10.1 Violations Continue

Any violation of previous zoning, subdivision, sedimentation and erosion control or flood hazard ordinances will continue to be a violation under this Ordinance and be subject to penalties and enforcement under this Ordinance unless the use, development, or activity complies, in its entirety, with the provisions of this Ordinance.

1.10.2 Prior Nonconformities and Grandfathered Uses

Any use, plan, building, or lot that was nonconforming or grandfathered under prior ordinances shall be considered a nonconformity under this Ordinance except as may be otherwise provided under Article 14, Nonconformities. The provisions of Article 14, Nonconformities, shall be applicable to all nonconformities. Uses, plans, buildings, or lots that were previously nonconforming or grandfathered that become conforming because of adoption of this Ordinance shall no longer be considered nonconformities provided that all applicable provisions of this Ordinance are complied with.

1.10.3 Effect of this Ordinance on Approved Plans and on Completed Applications

A. Approved Site Plans, Plats, and Permits and Completed Applications

1. Completion of development under an approved site plan, preliminary plat, final plat, major or minor special use permit, or building permit (if none of the preceding approvals are required) shall be governed by the ordinance under which the approval was granted.
2. An application for a site plan, preliminary plat, final plat, major or minor special use permit, building permit (if none of the preceding approvals are required), or development plan associated with a zoning map change that was administratively determined to be substantially complete as of December 31, 2005, shall be governed by the ordinance in effect at the time of submission if it complied with such ordinance at that time. The expiration and continuing validity of any such site plan, plat, or permit shall be governed by the previous ordinance. The continuing validity of any such development plan shall be governed by paragraph 1.10.3A.3 below and paragraph 3.5.12, Deviations from Approved Development Plans.
3. For property with a development plan approved under an ordinance in effect prior to adoption of this Ordinance, an application for a site plan, preliminary plat, final plat, major or minor special use permit, or building permit (if none of the preceding approvals are required) that is substantially complete as of December 31, 2006 or within two years of the date of development plan approval, whichever is later, shall conform to the approved development plan except that it shall comply with the provisions of this Ordinance adopted for environmental purposes, including but not limited to Article 8, Environmental Protection, Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control, and to all other applicable laws or ordinances adopted for environmental purposes.

B. Timely Submission of Information

Applicants who have substantially complete applications as provided above shall comply with all requests for further information and submit all necessary revisions of submitted plans in a timely manner. A delay of more than 90 days in submission of information or

revisions requested shall constitute effective withdrawal of the application, with loss of all fees paid. Any new application shall then conform with the provisions of this Ordinance.

1.10.4 Violations in Progress

The prosecution of violations which occurred under previous ordinances shall continue until resolved.

1.10.5 Zoning District Name Changes

- A. The zoning district names in effect prior to the effective date of this Ordinance are hereby converted, as shown on the following table. The addition of new zoning districts or the deletion of zoning districts subsequent to the original adoption of this Ordinance is not reflected in the following table.

PREVIOUS DISTRICT		NEW DISTRICT	
Residential Districts			
RD	Rural District	RR	Residential Rural
R-20	Residential 20	RS-20	Residential Suburban – 20
R-15, R-10	Residential 15, 10	RS-10	Residential Suburban – 10
R-8	Residential 8	RS-8	Residential Suburban – 8
RM-8, RM-12, RM-16	Residential Multifamily 8, 12, 16	RS-M	Residential Suburban Multifamily
R-5	Residential 5	RU-5	Residential Urban – 5
R-3	Residential 3	RU-5(2)	Residential Urban – 5(2)
RM-16, RM-20	Residential Multifamily 16, 20	RU-M	Residential Urban Multifamily
ITOD-CN RM-CN 40 RM-CN 60 RM-CN 80	Interim TOD Compact Neighborhood Residential Multifamily Compact Neighborhood 40, 60, 80	RC	Residential Compact
Nonresidential Districts			
NC	Neighborhood Commercial	CN	Commercial Neighborhood
O&I-1, O&I-2	Transitional Office and Institutional, General Office and Institutional	OI	Office and Institutional
GC	General Commercial	CG	Commercial General
CBD	Central Business District	CBD	Central Business District
RSCH, RAD	Research Park, Research Applications	SRP	Science Research Park
I-2 CT	Light Industrial Commercial Trade	IL	Industrial, Light
I-3	Heavy Industrial	I	Industrial
Planned Districts			
PDR	Planned Density Residential	PDR	Planned Development Residential
UC	University and College	UC	University and College
SC	Shopping Center	CC	Commercial Center
I-1	Industrial Park	IP	Industrial Park
MU	Mixed Use	MU	Mixed Use
Overlay Districts			
--	-- NEW --	-P	Neighborhood Protection Overlay
--	-- NEW --	-TO	Transitional Office Overlay
60 to 65 LDN Above 65 LDN	Airport Overlay	-A60 -A65	Airport Overlay
-DDO	Downtown Design Overlay	-DDO	Downtown Design Overlay
MTC	Major Transportation Corridor Overlay	-MTC	Major Transportation Corridor Overlay
-H	Historic District Overlay	-H	Historic Districts & Landmarks Overlay
Watershed Protection Overlay			
M/LR-A, -B F/J-A, -B E-A, -B	Lake Michie/Little River District Falls/Jordan District Eno River District	M/LR-A, -B F/J-A, -B E-A, -B	Lake Michie/Little River District Falls/Jordan District Eno River District

- B. Projects originally developed as R-20 Cluster Developments prior to 1994 that were converted to R-15 projects under the 1994 zoning ordinance shall be designated as RS-20 developments with the adoption of this Ordinance.

- C.** All parcels zoned with development plans, both developed and undeveloped, shall continue to carry the (D) designation. Deviations from such development plans shall be governed by the provisions of paragraph 3.5.12, Deviations from Approved Development Plans.

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Article 2 | Review Authority

Sec. 2.1 Governing Bodies

2.1.1 Defined

The governing bodies identified in the text of this Ordinance as having authority to enforce certain provisions of this Ordinance are:

A. Durham County Board of Commissioners

The Durham County Board of Commissioners (hereinafter referred to as the Board of Commissioners) for property located within Durham County but located outside of any City limits.

B. Durham City Council

The Durham City Council for property located within the City limits of the City of Durham.

2.1.2 Powers and Duties

The governing bodies shall be responsible for final action regarding the following:

- A.** Amendments to the adopted Comprehensive Plan, including the annual Evaluation and Assessment Report;
- B.** Amendments to the text of this Ordinance;
- C.** Amendments to the text of the Historic Properties Local Review Criteria;
- D.** Amendments to the text of Local Historic District Preservation Plans;
- E.** Applications for zoning map changes;
- F.** Applications for major site plans;
- G.** Applications for historic district/landmark designation;
- H.** Applications for major special use permits and TIA special use permits;
- I.** Vested rights determinations that require a public hearing pursuant to Sec. 3.20, Statutory Vested Rights Determination; and
- J.** The *Durham Design Manual* and the *Landscape Manual for Durham, NC* (the *Landscape Manual*), including any subsequent revisions.

Sec. 2.2 Joint City-County Planning Committee (JCCPC)

2.2.1 Establishment

The Joint City-County Planning Committee (JCCPC) is established in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.2.2 Membership

Members of the JCCPC shall be appointed in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.2.3 Powers and Duties

- A.** The power and duties of the JCCPC shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning.
- B.** The JCCPC shall also be responsible for review and recommendation regarding amendments to the text of this Ordinance and policies of the Durham Comprehensive Plan that affect both the City and County jurisdictions.
- C.** The JCCPC shall be responsible for review of the Administrative Guidelines established by the Planning Director governing neighborhood meetings pursuant to Sec. 3.2.3, Neighborhood Meeting; the guidelines for establishing Neighborhood Protection Overlays pursuant to Sec. 4.6.2, Establishment of Overlay; the *Landscape Manual* pursuant to paragraph 9.2.1, Landscape Manual; and the *Durham Design Manual* pursuant to paragraph 6.12.2A.7, *Durham Design Manual*.

Sec. 2.3 Planning Commission

2.3.1 Establishment

The Durham Planning Commission was created by the Board of Commissioners and the City Council on July 1, 1988 in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.3.2 Membership, Terms and Compensation

Planning Commission numbers, composition, terms, vacancies, removals, and compensation shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.3.3 Officers, Meetings, Quorum

Planning Commission officers, meetings, quorum, and rules of procedure shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning and consistent with State statutes.

2.3.4 Rules of Procedure

The Planning Commission shall adopt rules of procedure for the conduct of its business, consistent with State law and this Ordinance.

2.3.5 Powers and Duties

The Planning Commission shall have the following powers and duties.

A. Review Authority

1. The Planning Commission shall be responsible for reviewing and making recommendations (which shall be construed as meeting the certification required by NCGS §153A-344 or NCGS § 160A-387, as applicable) regarding the following:
 - a. Adoption of or amendments to the Comprehensive Plan and related plans;
 - b. Amendments to the text of this Ordinance;
 - c. Applications for zoning map change;
 - d. Applications for historic district designation;
 - e. Adoption of or amendment to redevelopment plans as set forth in NCGS §160A-513; and
 - f. The Planning Department Annual Work Plan.
2. All decisions and recommendations of the Planning Commission shall require an affirmative vote. Tie votes shall be considered decisions or recommendations for denial.
3. The Planning Commission shall perform related duties as directed by the governing bodies.
4. The Planning Commission may exercise additional powers as may be described elsewhere in this Ordinance and as permitted by the Interlocal Cooperation Agreement on City-County Planning.

B. Annual Report

The Planning Commission shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the Planning Commission's activities, problems, and actions of the Planning Commission and any budget requests or other recommendations.

Sec. 2.4 Board of Adjustment (BOA)

2.4.1 Establishment

The Board of Adjustment is established in accordance with the Interlocal Cooperation Agreement on City-County Planning and NCGS §160A-388, NCGS §153A-345, and in accordance with special legislation adopted for the City and County regarding the Board of Adjustment.

2.4.2 Membership, Terms and Compensation

The Board of Adjustment shall consist of seven members and three alternates. Its composition, terms, vacancies, removals, and compensation shall be in accordance with the Interlocal Agreement on City-County Planning.

2.4.3 Officers, Meetings, Quorum

Board of Adjustment officers, meetings, and quorum shall be in accordance with the Board's adopted *Rules of Procedure* and Interlocal Cooperation Agreement on City-County Planning.

2.4.4 Rules of Procedure

The Board of Adjustment shall adopt rules of procedure for the conduct of its business, consistent with State law, special legislation, the City-County Interlocal Agreement and this Ordinance.

2.4.5 Powers and Duties

The Board of Adjustment shall have the following powers and duties.

A. Authority

1. The Board of Adjustment shall be responsible for final action regarding the following:
 - a. Applications for variances.
 - b. Applications for design and minor special use permits.
 - c. Appeals of decisions made by administrative officials interpreting the provisions of this Ordinance.
 - d. Applications for reasonable accommodation.
2. The Board of Adjustment shall perform related duties as directed by the governing bodies.

B. Annual Report

The Board of Adjustment shall prepare an annual report in accordance with the Board's adopted *Rules of Procedure* and the City-County Interlocal Agreement.

2.4.6 Decisions

- A. Voting requirements for written decisions, where required, and for other actions shall be as specified in the Board's adopted *Rules of Procedure*.
- B. Every quasi-judicial decision of the Board of Adjustment shall be reduced to writing and subject to review by the superior court by proceedings in the nature of a petition for a writ of certiorari pursuant to NCGS § 160A-393 or NCGS § 153A-345.1, as applicable. Any petition

for review by the court shall be filed with the clerk of superior court by the later of 30 days after the decision of the Board of Adjustment is effective, or after a written copy thereof is delivered to the party who has made a request for such decision in compliance with paragraph C. below, whichever is later. When first class mail is used to deliver notice of the decision, three days shall be added to the time to file the petition.

- C. Any party desiring a copy of the decision of the Board of Adjustment shall file a written request with the Planning Department prior to the effective date of the decision. Such decisions shall be delivered by personal delivery, electronic mail, or by first class mail.
- D. A written decision shall be considered filed with the clerk of the Board of Adjustment, and thus effective, on the date that the final necessary signature on such decision is obtained and the decision is ready for distribution.

Sec. 2.5 Historic Preservation Commission (HPC)

2.5.1 Establishment

The Durham Historic Preservation Commission (HPC) is established in accordance with the Interlocal Cooperation Agreement for the Historic Preservation Commission and NCGS §160A -400.7. The HPC is designated as the historic preservation advisory and quasi-judicial body for the County and City, and shall have the powers and duties described in this section.

2.5.2 Membership, Terms and Compensation

The Historic Preservation Commission shall consist of nine members. Its composition, terms, vacancies, removals, and compensation shall be in accordance with the Interlocal Cooperation Agreement. Additionally:

- A. All members of the HPC shall have equal rights regardless of whether the matters at issue are located inside or outside of the Durham City limits.
- B. Vacancies occurring for reasons other than the expiration of terms shall be filled by the appointing authority for the period of the unexpired term.

2.5.3 Rules of Procedure, Organization, Meetings, Quorum

- A. The Historic Preservation Commission shall adopt rules of procedure for the conduct of its business, consistent with Interlocal Cooperation Agreement, State law, and this Ordinance.
- B. The Historic Preservation Commission officers, meetings, and quorum, shall be in accordance with the Commission's adopted *Rules of Procedure*, the Interlocal Cooperation Agreement, and State law as applicable.

2.5.4 Powers and Duties

The HPC is authorized and empowered to undertake such actions reasonably necessary to discharge and conduct its duties and responsibilities.

A. General Authority

The HPC shall act to promote, enhance and preserve the character and heritage of the Durham community. The HPC has the following general authority:

- 1. To undertake inventories in Durham County of properties of historical, architectural or archaeological significance.
- 2. To sponsor or conduct educational programs regarding Historic Districts or Historic Landmarks.
- 3. To give advice to property owners concerning the treatment of the historical and visual characteristics of his or her property located within any Historic District or designated as an Historic Landmark, such as color schemes, gardens and landscape features, and minor decorative elements.
- 4. To cooperate with the State, Federal and local governments in historic preservation matters.
- 5. To enter, solely in the performance of its official duties and only at reasonable times and only with the consent of the property owner, upon private land for the examination or

survey of the property. However, no member, employee or agent of the HPC may enter any private building or structure without the express consent of the occupants or owner.

6. Recommend to the Board of Commissioners and/or the City Council the following:
 - a. Areas to be designated by ordinance as Historic Districts;
 - b. The designation of any Historic District be revoked or removed;
 - c. Buildings, structures, sites, areas or objects within their relative areas of zoning jurisdiction to be designated by ordinance as Historic Landmarks;
 - d. The designation of any building, structure, site, area, or object as an Historic Landmark be removed;
 - e. Other means of preservation and intervention at such times as vital historic resources appear, in the view of the HPC, to be threatened by neglect, use, demolition, or alteration; and
 - f. Changes to the City-County Interlocal Agreement which establishes the HPC, or any other related County and City ordinances, and to propose new ordinances relating to Historic Districts, Historic Landmarks or the total program for the development and preservation of historic resources of Durham and its environs.

B. Demolition by Neglect

For purposes of Sec. 3.18, Demolition by Neglect (City Only), the Historic Preservation Commission is designated a Planning Agency under GS 160A-361 and GS 153A-345, authorized to operate as a Board of Adjustment (BOA) and make quasi-judicial decisions under GS 160A-388(a), and GS 153A-321 for the administrative determinations described herein.

C. Review Authority

The HPC shall be responsible for reviewing and making recommendations regarding the following applications:

1. Local historic district/landmark designations;
2. Amendments to the text of the Historic Properties Local Review Criteria; and
3. Amendments to the text of Local Historic District Preservation Plans.

D. Final Authority

The HPC shall be responsible for final action regarding applications for certificates of appropriateness.

E. Annual Report

The HPC shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the HPC's activities, problems, and actions of the HPC and any budget requests or other recommendations.

2.5.5 Decisions

- A. An affirmative vote of a majority of members present and voting shall be required for all actions except as noted below.

- B.** The voting requirements applicable to the Board of Adjustment in paragraph 2.4.6, Board of Adjustment Decisions, shall be used for HPC decisions when the HPC is functioning as a Board of Adjustment under Sec. 3.18, Demolition by Neglect (City Only).

Sec. 2.6 Other Advisory Bodies

A variety of other commenting or advisory bodies approved by a governing body may participate in development review under this Ordinance, including, but not limited to:

- A.** The Durham Open Space and Trails Commission;
- B.** The Durham Environmental Affairs Board;
- C.** The Durham City/County Appearance Commission; and
- D.** The Durham Bicycle and Pedestrian Advisory Commission.

Sec. 2.7 Durham City-County Planning Department

2.7.1 Establishment

The Durham City-County Planning Department is established in accordance with NCGS §153A-321 and NCGS §160A-361, and serves as the planning agency and the community development agency for the City of Durham and Durham County. The Department administers this Ordinance for the City and County.

2.7.2 Planning Director

The Planning Director is designated as head of the Durham City-County Planning Department and shall be responsible for administering the provisions of this Ordinance as set forth in this section.

2.7.3 Delegation of Authority

The Planning Director may designate any staff member to represent the Director in any function assigned by this Unified Development Ordinance. The Director shall remain responsible for any final action.

2.7.4 Powers and Duties

The Planning Director or designee shall have the following powers and duties.

- A.** The Planning Director or designee is designated to perform the following duties:
 - 1.** Make studies of the area within the planning jurisdiction and surrounding areas;
 - 2.** Determine objectives to be sought in the development of the study area;
 - 3.** Prepare plans for achieving these objectives;
 - 4.** Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
 - 5.** Advise the governing bodies concerning means for carrying out plans or amending plans;
 - 6.** Accept, receive and disburse funds, grants, and services made available by the Federal government or the State government used in the furtherance of departmental functions;
 - 7.** Administer zoning and subdivision regulations and other related land use controls;
 - 8.** Exercise any functions in the administration and enforcement of various means for carrying out plans that the governing bodies may direct;
 - 9.** Develop, approve, and implement design guidelines;
 - 10.** Develop, approve, and implement administrative procedures and guidelines to execute the provisions of this Ordinance; and
 - 11.** Perform any other related duties that the governing body may direct.
- B.** The Planning Director or designee shall be responsible for reviewing and making recommendations regarding the following:
 - 1.** Applications for floodplain development permits;

2. Applications for major site plan review;
 3. Applications for major preliminary plat review;
 4. Applications for minor and major certificates of appropriateness;
 5. Applications for special use permits;
 6. Amendments to adopted land use plans;
 7. Amendments to the text of this Ordinance;
 8. Applications for zoning map change;
 9. Applications for historic district/landmark designation; and
 10. Applications for vested rights determinations requiring a public hearing pursuant to Sec. 3.20, Statutory Vested Rights Determination.
- C. The Planning Director or designee shall be responsible for final action regarding the following:
1. Interpretation of this Ordinance;
 2. Applications for Sign Permits;
 3. Applications for subdivision review pursuant to Sec. 3.6, Subdivision Review;
 4. Applications for site plans pursuant to Sec. 3.7, Site Plan Review;
 5. Applications for common and way-finding signage plans;
 6. Applications for home occupation permits;
 7. Administrative certificates of appropriateness;
 8. Petitions for demolition by neglect investigations;
 9. Applications for limited agriculture permits;
 10. Applications for architectural review; and
 11. Applications for temporary use permits.

Sec. 2.8 Durham City-County Inspections Department

2.8.1 Establishment

The City-County Inspections Department is authorized by the North Carolina General Statutes to enforce certain State statutes, State regulations, such as the North Carolina State Building Code, and local ordinances, including, but not limited to, ordinances related to zoning and development.

2.8.2 Inspections Director

The Inspections Director is designated as the head of the City-County Inspections Department and shall be responsible for administering the provisions of this Ordinance as set forth in this section.

2.8.3 Delegation of Authority

The Inspections Director may designate any staff member to represent the Director in any function assigned by this Unified Development Ordinance. The Director shall remain responsible for any final action.

2.8.4 Power and Duties

With regard to this Ordinance, the Inspections Director, or designee, shall enforce provisions of this Ordinance which pertain to new construction and the issuance of building permits and Certificates of Compliance, and shall be responsible for final action regarding:

- A.** Interpretations of matters related to the North Carolina Building Code;
- B.** Interpretations of matters related to Sec. 8.4, Floodplain and Flood Damage Protection Standards; and
- C.** Applications for sign permits.

Sec. 2.9 Other Departments

Other departments may be empowered by the governing bodies to develop, maintain and implement technical standards, specifications, and guidelines.

Sec. 2.10 Summary of Review Authority

The following table summarizes review authority under this Unified Development Ordinance.

Application or Permit	Sedimentation and Erosion Control Officer	Inspections Director	Planning Director	Historic Preservation Commission	Board of Adjustment	Planning Commission	Governing Body	Section
Sedimentation and Erosion Control Officer								
Erosion Control Plan	D						<A>	Sec. 3.8
Inspections Director Action								
Sign Permit		D	R		<A>			Sec. 3.10
Floodplain Development Permit		D	R					Sec. 3.21
Planning Director Action								
Interpretation of the Ordinance		R	D*		<A>			Sec. 3.1
Common and Way-Finding Signage Plans		R	D		<A>			Sec. 3.11
Home Occupation Permit			D					Sec. 3.13
Administrative Certificate of Appropriateness			D	<A>				Sec. 3.17
Demolition by Neglect (City Only)			D	<A>				Sec. 3.18
Limited Agriculture Permit (City Only)			D					Sec. 3.22
Architectural Review			D					Sec. 3.23
Administrative Site Plan Review	R	R	D					Sec. 3.7
Subdivision Review other than Major Preliminary Plat	R	R	D					Sec. 3.6
Temporary Use Permit			D		<A>			Sec. 3.12
Historic Preservation Commission Action								
Certificate of Appropriateness			R	D	<A>			Sec. 3.17
Board of Adjustment Action								
Variance					<D>			Sec. 3.14
Appeal of Administrative Decision					<D>			Sec. 3.15
Design or Minor Special Use Permit			R		<D>			Sec. 3.9
Governing Body Action								
Comprehensive Plan Amendment			R			<R>	<D>	Sec. 3.4
Text Amendment			R			<R>	<D>	Sec. 3.19
Zoning Map Change			R			<R>	<D>	Sec. 3.5
Historic District Designation			R	<R>		<R>	<D>	Sec. 3.16
Landmark Designation			R	<R>			<D>	Sec. 3.16
Major or Transportation Special Use Permit			R				<D>	Sec. 3.9
Vested Rights Determination		R	R				<D>	Sec. 3.20
Major Site Plan Review	R	R	R				D	Sec. 3.7
Major Preliminary Plat	R	R	R				D	Sec. 3.6

R = Review or Recommendation

D = Decision

A = Appeal

<> = Public Hearing Required

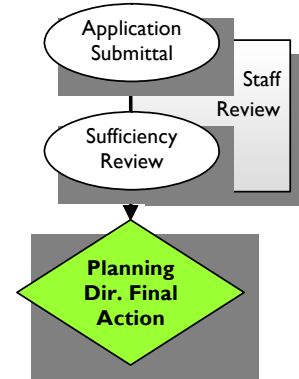
* Except as noted in the relevant Ordinance section

Article 3 | Applications and Permits

Sec. 3.1 Interpretation of this Ordinance

3.1.1 Applicability

- A. When uncertainty exists, the director of the appropriate department, or designee, as identified below, shall be authorized to make all interpretations concerning the provisions of this Ordinance. In making these interpretations, all provisions shall be:
1. Considered as minimum requirements;
 2. Liberally construed in favor of the governing body;
 3. Deemed neither to limit nor repeal any powers granted under State statutes; and
 4. Require application of the more stringent provisions wherever the provisions of this ordinance appear to impose conflicting provisions that cannot otherwise be reconciled.



B. Interpretation Authority

The Planning Director shall make all interpretations of this Ordinance, but shall not make interpretations regarding the following sections:

1. Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, and Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, the County Engineer, or designee, shall be authorized to make all interpretations concerning the provisions of these sections.
2. Sec. 8.4, Floodplain and Flood Damage Protection Standards, the Inspections Director, acting as the Floodplain Administrator, or designee, in consultation with the Planning Director, shall be authorized to make all interpretations related to this section.
3. Paragraph 12.3.1, Street Layout, the Public Works Director or City Transportation Director or designee, as applicable, shall be authorized to make all interpretations concerning the provisions of this section.
4. Sec. 12.8, Stormwater Management, the Public Works Director or County Engineer or designees, as appropriate, shall be authorized to make all interpretations concerning the provisions of this section.
5. All interpretations of matters relating to the North Carolina Building Code shall be made by the Inspections Director or designee.
6. The Planning Director may defer interpretations of this Ordinance to appropriate City and/or County officials.

3.1.2 Application Requirements

A request for interpretation shall be submitted in writing.

3.1.3 Action by Planning Director

- A. The Planning Director shall:
 - 1. Review and evaluate the request in light of the text of this UDO, the Official Zoning Map, the Comprehensive Plan and any other relevant information;
 - 2. Consult with the Inspections Director or designee and coordinate with other staff, including the City or County Attorney, as necessary; and
 - 3. Render an opinion.
- B. The interpretation shall be provided to the applicant in writing.

3.1.4 Official Record

The Planning Director or designee shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during normal business hours.

3.1.5 Appeal

Final action on an official interpretation of this Ordinance by the Planning Director or designee may be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.2 Common Review Procedures

3.2.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow.

- A.** Comprehensive Plan Amendment
- B.** Zoning Map Change
- C.** Subdivision, including Conservation Subdivision
- D.** Site Plan
- E.** Special Use Permit
- F.** Sign Permit
- G.** Temporary Use Permit
- H.** Home Occupation Permit
- I.** Variance
- J.** Appeal of Administrative Decision
- K.** Historic District/Landmark Designation
- L.** Certificate of Appropriateness
- M.** UDO Text Amendment
- N.** Statutory Vested Rights Determination
- O.** Floodplain Development Permit
- P.** Limited Agriculture Permit (City Only)
- Q.** Architectural Review
- R.** Reasonable Accommodation

3.2.2 Pre-Application Conference

- A.** Before submitting an application for development approval that does not require a pre-submittal conference, it is recommended that a pre-application conference be scheduled with the Planning Director or designee to discuss the procedures, standards and regulations required for development approval in accordance with of this Ordinance.
- B.** A mandatory pre-application conference with the Planning Director or designee shall be required for the following development reviews:
 - 1.** Comprehensive Plan amendments not initiated by the City or County;
 - 2.** Zoning map changes not initiated by the City or County;
 - 3.** Site plan or preliminary plat applications for property zoned or in the process to be zoned:
 - a.** Design District; or
 - b.** With a development plan.

4. Conservation subdivision (after preparation of site analysis map);
 5. Design, minor, or major special use permit;
 6. Variance;
 7. Landmark designation; and
 8. Major Works certificate of appropriateness.
- C. A mandatory pre-application conference with the City Transportation Director or designee shall be required for the following development reviews:
1. Traffic impact analysis; and
 2. Transportation special use permit.

3.2.3 Neighborhood Meeting

- A. All applicants shall hold a neighborhood meeting prior to submitting an application, but after a pre-application conference, for the following development reviews:
1. Comprehensive Plan amendment;
 2. Zoning map change that requires a TIA pursuant to Sec. 3.3, Traffic Impact Analysis;
 3. Conservation subdivision; and
 4. Other applications as may be specified elsewhere in this Ordinance.
- B. The purpose of the neighborhood meeting shall be to inform the neighborhood of the nature of the proposed land use and development features, explain the site plan if any, and solicit comments. This requirement shall not mean that all association members, owners or tenants are required to attend such a meeting.
- C. The applicant shall provide notice to the following by first class mail at least ten days prior to the date of the neighborhood meeting:
1. Each owner of record of any land located within 600 feet of the property for zoning map change requests that do not require a comprehensive plan amendment application. Otherwise, 1,000 feet shall be required for any other applicable development approval; and
 2. Neighborhood associations located within 1,000 feet of the site which have registered with the Planning Department to receive notice.
- D. The neighborhood meeting notice shall include at a minimum the following:
1. The applicant's name and telephone number;
 2. The street address of the site with an identification map;
 3. A clear explanation of what the applicant is proposing; and
 4. The date, time, and location of the meeting.
- E. The Planning Director or designee may develop administrative regulations setting forth guidelines pertaining to any additional requirements for the conduct of the meeting. Such guidelines shall be subject to review by the Joint City-County Planning Committee.

3.2.4 Application Requirements

The following requirements shall apply to all applications for development approval identified in paragraph 3.2.1, Applicability.

A. Forms

Applications required under this Ordinance shall be submitted on forms and in such numbers as required by the appropriate department. All forms shall include, at a minimum, the following information:

1. Contact information for the individual or firm submitting the application.
2. Contact information for the individual or firm on whose behalf the application is being submitted.
3. Identification of the property affected by the application, such as a legal description, address, or PIN as may be appropriate.
4. Any other information required by the director of the appropriate department, or designee, or the provisions of this Ordinance.

B. Fees

1. All applications and associated fees shall be filed with the appropriate department.
2. Filing fees shall be established from time to time to defray the actual cost of processing the application.
3. An applicant who has paid the appropriate fee pursuant to the submission of an application, but who chooses to withdraw such application prior to its distribution for review shall be entitled to a refund of the total amount paid, less ten percent for administrative costs, upon written request to the appropriate department. Once review has begun, no refund shall be available, except that unused notice surcharges shall be refunded less ten percent for administrative purposes. No refund of technology surcharges shall be provided.

C. Applications Sufficient for Processing

1. Applications shall contain all required information as described on forms available from each department involved in the review process, unless modified by the department, in writing, pursuant to 2, below. Incomplete applications may be reviewed in extraordinary circumstance.
2. The presumption shall be that all of the information required in the application forms is necessary to satisfy the requirements of this section. However, it shall be recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. The applicant may rely on the recommendations of the appropriate department as to whether more or less information should be submitted.
3. Once the application has been determined sufficient for processing, copies of the application shall be referred by the appropriate department to the appropriate - reviewing entities.
4. The director of the appropriate department, or designee, may require an applicant to present evidence of the authority to submit an application.

5. An application shall be considered to have been accepted for review only after it has been determined to be complete as provided above, not upon submission to the appropriate department.

D. Application Deadline

Applications sufficient for processing shall be submitted to the director of the appropriate department, or designee, in accordance with the established schedule. Schedules indicating submittal dates shall be developed each year and made available to the public.

E. Staff Consultation after Application Submitted

1. Upon receipt of an application sufficient for processing, the director of the appropriate department, or designee, shall review the application and confer with the applicant to ensure an understanding of the applicable requirements of this Ordinance; that the applicant has submitted all of the information they intend to submit; and that the application represents precisely and completely what the applicant proposes to do.
2. Once the applicant indicates that the application is as complete as the applicant intends to make it, the application shall be placed before the appropriate approving authority in accordance with standard procedures. However, if the director of the appropriate department, or designee, believes the application is incomplete, a recommendation to deny the application on that basis shall be provided to the appropriate approving authority.

F. Related Applications

1. Related applications necessary for development approvals may be filed and reviewed simultaneously, at the option of the applicant. Any application that also requires a variance, special use permit, or certificate of appropriateness shall not be eligible for final approval until the variance, special use permit, or certificate of appropriateness has been granted.
2. Related applications submitted simultaneously are subject to approval of all other related applications; denial or disapproval of any concurrently submitted application shall stop consideration of any related applications until the denied or disapproved application is resolved.

3.2.5 Notice and Public Hearings

A. Summary of Notice Required

1. Notice shall be required for applications for development approval as shown in the table below.

Procedure	Published	Mailed	Posted
Comprehensive Plan Future Land Use Map Amendment	✓	✓	✓
Zoning Map Change	✓	✓	✓
Site Plan		✓	
Design or Minor Special Use Permit	✓	✓	✓
Major or Transportation Special Use Permit	✓	✓	✓
Variance	✓	✓	✓
Appeal of Administrative Decision	✓	✓	✓
Major Works Certificate of Appropriateness		✓	✓
Historic District Designation	✓	✓	✓
Historic Landmark Designation	✓	✓	
Historic Properties Local Review Criteria Text	✓	✓	
Historic District Preservation Plan Text Amendment	✓	✓	✓
UDO or Comprehensive Plan Text Amendment	✓	✓	
Vested Rights Determination	✓	✓	✓
Evaluation and Assessment Report	✓		
Reasonable Accommodation	✓	✓	✓

2. Exceptions to the table above are as follows:
 - a. Mailed notice for site plans shall be required only for major site plans pursuant to paragraph 3.7.3B, Major Site Plans.
 - b. Posting for comprehensive plan amendments shall be required only for amendments that change a Tier designation without an associated zoning map change.
 - c. For initial zonings where the City proposes adopting the existing County zoning designation, no posting is required as long as the property owner is notified by mailed notice. (see *City of Durham Code of Ordinances: Part I, Chapter VI, Article 9, Sec. 94, Notice of public hearings*).
 - d. For Appeal of Administrative Decision, posting is not required when the appeal is not site specific.

B. Public Notice Requirements

1. Published Notice

An advertisement shall be placed by the Planning Department in a local newspaper of general circulation once a week for two successive calendar weeks, the first notice

being published not less than ten days nor more than 25 days before the date fixed for the public hearing.

2. Mailed Notice

a. Mailed Notice Table

The director of the appropriate department or designee shall provide notification as indicated in the notification table below:

Procedure	Property Owner		Registered Organization
	Subject Property, if applicable	Distance of Property from Subject Property (ft.)	Distance of Registered Organization or Individual from Subject Property (ft.)
Comprehensive Plan Future Land Use Map	✓	1,000	1,000
Comprehensive Plan Text Amendment	---	---	All
Zoning Map Change	✓	600	1,000
UDO Text Amendment	---	---	All
Initial Zoning	✓	100	1,000
Site Plans ¹	✓	600	1,000
Board of Adjustment	✓	600	1,000
Governing Body Quasi-Judicial Hearings	✓	600	1,000
Historic District Designation	✓	600	1,000
Historic Landmark Designation and Certificate of Appropriateness (major works)	✓	All adjacent properties ²	---
Historic District Preservation Plan Text Amendment	✓	All adjacent properties ²	1,000
Historic Properties Local Review Criteria Text Amendment	---	---	All
Vested Rights Determination	✓	All adjacent properties ²	---

¹ Mailed notice shall be required only for major site plans pursuant to paragraph 3.7.3B, Major Site Plans.

² Adjacent properties shall include properties directly across the street from the subject property (where applicable).

- b. All property owner notification shall be performed through first class mail utilizing the County property tax listings for property ownership.
- c. Notice to registered organizations or individuals shall utilize the contact information provided to the Planning Department to receive notice pursuant to paragraph 3.2.5D, Registration to Receive Notice. Notice shall be provided to each organization or individual via first class mail, electronic mail, or another manner offered by the Planning Director.
- d. The notice shall be mailed at least 14 but not more than 25 days prior the date of the public hearing.
- e. Mailed notice under this section shall not be required if a zoning map change directly affects more than 500 properties owned by a total of at least 500 different property owners, and the Planning Director or designee elects to use the following expanded published notice requirements:
 - (1) An advertisement of not less than ½-page may be placed in a local newspaper of general circulation once a week for two successive calendar weeks, the first notice being published not less than ten days nor more than 25 days before the date fixed for the public hearing.
 - (2) In addition to the published notice, the Planning Director or designee shall post one or more signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed change in accordance with paragraph 4.c. , Posted Notice, below rather than the notice required pursuant to subsection 3, Posted Notice (Sign), below.
 - (3) Mailed notice shall be provided by first class mail to property owners who reside outside of the newspaper's circulation area.

3. Posted Notice (Sign)

A sign noticing the public hearing shall be prominently posted by the director of the appropriate department, or designee, not less than 14 days prior to the public hearing at which the application shall be reviewed. The sign shall be posted on the property or at a point visible from the nearest public street. In the case of multiple parcels, sufficient signs shall be posted to provide reasonable notice to interested persons.

4. Content of Notice

For all applications for development approval except UDO text amendments, the notices listed above shall contain the following specific information.

a. Published or Mailed Notice

A published or mailed notice shall provide at least the following:

- (1) A general description or address of the location of the land that is the subject of the application, and for mailed notice, a location map;
- (2) A description of the action requested;
- (3) Where a zoning map change or a Comprehensive Plan Future Land Use Map amendment is proposed, the current and proposed designations;
- (4) The time, date and location of the public hearing;
- (5) A phone number to contact the Planning Director or designee;

- (6) A statement that interested parties may appear at the public hearing; and
- (7) A statement that substantial changes to the proposed action may be made following the public hearing.

b. Published Notice for UDO, Comprehensive Plan, Historic District Preservation Plan, or Historic Properties Local Review Criteria Text Amendments

A published notice shall include the following specific information:

- (1) A summary description of the proposed change;
- (2) The time, date and location of the public hearing;
- (3) A phone number to contact the Planning Director or designee;
- (4) A statement that interested parties may appear at the public hearing; and
- (5) A statement that substantial changes to the proposed action may be made following the public hearing.

c. Posted Notice

Required posted notices shall indicate the following:

- (1) A case number;
- (2) Type of action; and
- (3) A phone number to contact the Planning Director, or designee.

C. Minor Defects in Notice

Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements.

D. Registration to Receive Notice

Upon adoption of this amended section, and every two years thereafter, any organization or individual may pay an established fee, if applicable, and register with the Planning Director to receive notice of all applications for development approval requiring mailed notice and other notice required under this Ordinance. To be eligible for registration, the applicant must provide the information required by the Planning Director, including manner of notice, whether first class mail, electronic mail, or other manner offered by the Planning Director. Notice will be provided in the manner specified in the registration information. Each organization or individual is responsible for providing updated information to the Planning Director as necessary, and must re-register and pay the established fee, if applicable, every two years in order to continue receiving notice.

E. Required Hearing

1. A legislative public hearing or a quasi-judicial hearing shall be required for development review as shown in the table below.

Applications for Approval	Historic Preservation Commission	Board of Adjustment	Planning Commission	Governing Body
Transportation Special Use Permit				✓ ¹
Comprehensive Plan Adoption/Amendment			✓	✓
Zoning Map Change			✓	✓
Minor and Design Special Use Permit		✓ ¹		
Major Special Use Permit				✓ ¹
Variance		✓ ¹		
Appeal of Administrative Decision		✓ ¹		
Historic District Designation	✓		✓	✓
Historic Landmark Designation	✓			✓
Certificate of Appropriateness (Major Works)	✓ ¹			
UDO Text Amendment			✓	✓
Historic District Preservation Plan Text Amendment	✓		✓ ²	✓
Historic Preservation Local Review Criteria Text Amendment	✓			✓
Vested Rights Determination				✓
Reasonable Accommodation		✓ ¹		

¹ Requires a quasi-judicial hearing.

² Required only if associated with adding or removing a local historic district designation.

2. The day of the public hearing shall be considered the day the hearing is originally advertised for, unless a deferral is granted by the governing body upon a request that follows the procedures set forth in this Ordinance regarding timely submission of requests for deferrals.

3.2.6 Notice of Decision

Within seven days after a decision is made, or as otherwise required in this Ordinance, a copy of the decision shall be provided to the applicant and filed in the appropriate department to be available for public inspection during regular office hours.

Sec. 3.3 Traffic Impact Analysis (TIA)

3.3.1 Applicability

Unless exempted below, a traffic impact analysis (TIA) shall be required for changes of use to determine if roadway improvements will be required, zoning map changes utilizing a development plan, site plans, and preliminary plats that can be anticipated to generate at least 150 vehicle trips at the peak hour (as determined by Institute of Transportation Engineers Standards). Trips generated by separate developments meeting the criteria of paragraph 3.3.3, TIA Submission for Projects with Cumulative Impacts, shall be considered cumulatively.

3.3.2 Exemptions

The following projects shall not be required to submit a TIA:

- A.** Projects located within the Downtown Tier.
- B.** Developments that submitted a TIA in conjunction with a zoning map change or previously approved site plan, special use permit, or other plan, where the TIA remains valid, consistent with the provisions of paragraph 3.3.6, Period of Validity.
- C.** Redevelopment of any site on which the increase in traffic at peak hour represents an increase of less than 150 trips from the previous development, if the redevelopment is initiated within 12 months of the cessation of use of the previous development so long as no access road that leads directly to the site is operating at a level of service worse than the jurisdiction's adopted level of service.

3.3.3 TIA Submission for Projects with Cumulative Impacts

A. Unified, Phased, or Otherwise Aggregated Developments

An applicant shall be required to submit a TIA, or obtain a transportation special use permit (TSUP) pursuant to Sec. 3.9, Special Use Permit, for a development plan, site plan, preliminary plat, special use permit, or other similar plan that does not otherwise meet the thresholds for submission of a TIA or for obtaining a TSUP if the development approval is for a project that:

- 1.** Shares features such as site access or other roadways, design elements, or other infrastructure with nearby unbuilt, but pending developments evidenced by valid, approved site plans or preliminary plats, or active site plan or preliminary plat submittals; and,
- 2.** When complete, will function in conjunction with such nearby developments as a single project, the impact on the infrastructure of which would exceed the thresholds for preparation of a TIA.

B. Determination

The City Transportation Director, or designee shall determine whether a development application meets the criteria in paragraph A, above, and shall determine whether one TIA shall be required for all of the aggregated development, or whether multiple TIAs may be employed for separate phases of the development.

3.3.4 Pre-Application Conference

The applicant shall schedule a pre-application meeting with the City Transportation Director or designee to discuss procedures, standards, and regulations required for TIA submittal and approval.

3.3.5 Requirements

A. Content

The City Transportation Director or designee shall set forth specific guidelines for preparation of TIAs. A TIA shall, at a minimum, provide the following information:

1. An estimate of the traffic generated as a result of the proposed development;
2. An analysis of the existing street system serving the proposed development; and
3. An assessment of the improvements needed to the existing street system in order to support the traffic anticipated to be generated by the proposed development.

B. Preparer

A TIA shall be prepared by a registered professional engineer with experience in traffic engineering.

C. Sources of Data

Estimates of vehicle trips shall be calculated based on trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers, unless an alternative source of information is approved by the City Transportation Director or the NCDOT.

3.3.6 Period of Validity

A TIA shall be valid for a specific site for no more than eight years, so long as no significant modifications to the development proposed for the site that substantially increase the traffic impact are made. A TIA submitted in connection with a project that is accessed by a road that is operating at a level of service lower than the jurisdiction's adopted level of service shall be valid for no more than five years, however.

3.3.7 Coordination with Zoning Map Changes, Site Plans, and Preliminary Plats

Transportation mitigation measures may be required to address issues raised by a TIA, or as part of the approval of a Transportation Special Use Permit (TSUP.) Such measures may include, but not be limited to, onsite and offsite improvements related to reduction of traffic impact on the surrounding road system, bicycle facilities, pedestrian movement, and the environment. These measures shall be conditions of development approval. Deletion or modification of these conditions shall require the same approval process that was required for the original project, unless the approved mitigation measure is deemed to conflict with NCDOT or City Transportation Department requirements, in which case they shall be modified to resolve the conflicts through submittal of a revised site plan or preliminary plat, as applicable.

3.3.8 Coordination with a Transportation Special Use Permit (TSUP)

Projects that require a TIA may also require a TSUP pursuant to Sec. 3.9, Special Use Permit.

Sec. 3.4 Comprehensive Plan Adoption/Amendment

3.4.1 Applicability

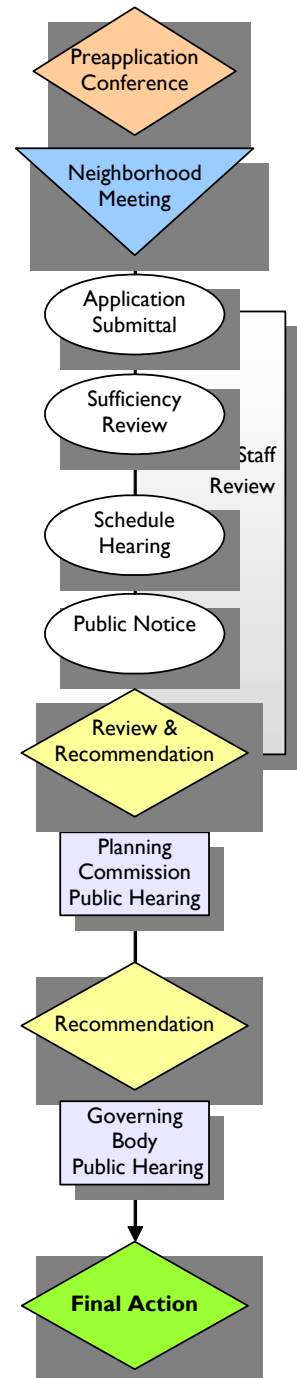
- A. The governing bodies shall consider adoption of or amendments to the Comprehensive Plan, as may be required from time to time.
- B. The governing bodies shall also consider adoption of or amendments to the Comprehensive Plan when zoning map change proposals are in conflict with the Plan, as determined by the Planning Director or designee.
- C. Adoption of or amendments to the Comprehensive Plan shall only apply to the jurisdiction in which the subject property is located unless the property is the subject of an annexation petition, or the amendment is pursuant to paragraph 3.4.10, Evaluation and Assessment Report.
- D. Amendments to the Comprehensive Plan can take the form of text amendments or amendments to the Future Land Use Map.

3.4.2 Coordination with Applications for Zoning Map Change

- A. When required to ensure consistency between the Comprehensive Plan and proposed zoning map changes, an application for a plan amendment shall be submitted concurrently with a zoning map change application. The public hearings on both the plan amendment and zoning map change may be heard at the same meeting; however, decisions shall be rendered with separate motions.
- B. A Comprehensive Plan Amendment shall not be required for Initial Zoning Map Changes, as defined in Sec. 16.3, Defined Terms.
- C. **Administrative Withdrawal**
The Planning Director or designee may withdraw applications for a Comprehensive Plan amendment under the following circumstances:
 1. The applicant has failed to submit required information within 90 days of a request for such information; or
 2. The associated zoning map change is administratively withdrawn pursuant to paragraph 3.5.7C, Administrative Withdrawal.

3.4.3 Pre-Application Conference

- A. Applicants applying for a plan amendment shall schedule a pre-application conference with the Planning Director or designee in accordance with paragraph 3.2.2, Pre-Application Conference.
- B. If a plan amendment application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.



3.4.4 Neighborhood Meeting

All applicants applying for a plan amendment shall hold a neighborhood meeting in accordance with paragraph 3.4.4, Neighborhood Meeting, except for the following:

- A. Changes made pursuant to paragraph 3.4.10, Evaluation and Assessment Report; or
- B. Amendments that are solely text amendments not specific to a particular site.

3.4.5 Application Requirements

An application for a plan amendment shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.4.6 Action by the Planning Commission

- A. Before making any recommendation on a plan amendment, the Planning Commission shall consider any recommendations from the Planning Director or designee, and shall conduct a public hearing.
- B. Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
- C. It is expected that the applicant or a representative of the applicant will appear at the meetings to explain why the Comprehensive Plan should be changed.
- D. Following the public hearing, the Planning Commission shall make a recommendation on the application to the governing body.
- E. The Planning Commission shall make its recommendation within three consecutive regular Commission cycles (approximately 90 days total) of its initial public hearing on the amendment.

3.4.7 Criteria for Future Land Use Map Change Recommendations

The recommendations of the staff and Planning Commission to the governing body shall show that the following criteria were considered regarding a proposed change to the Future Land Use Map of the Durham Comprehensive Plan:

- A. Whether the proposed change would be consistent with the intent, goals, objectives, policies, guiding principles and programs of any adopted plans;
- B. Whether the proposed change would be compatible with the existing land use pattern and/or designated future land uses;
- C. Whether the proposed change would create substantial adverse impacts in the adjacent area or the City or County in general; and
- D. Whether the subject site is of adequate shape and size to accommodate the proposed change.

3.4.8 Additional Criteria for Modification of Tier Boundary

Where a zoning map change involves modification of the Tiers established in the Comprehensive Plan, the following criteria shall be considered.

- A. The site is contiguous to the proposed Tier;
- B. The site is not in the drainage basin for Lake Michie or Little River or in the one-mile critical area around Jordan or Falls Reservoirs;
- C. The extension does not violate any agreements with neighboring jurisdictions; and
- D. If the proposal is to expand the Suburban Tier, extending utilities to serve the site is determined to be technically feasible by the Public Works Director or designee and will not result in inordinate cost to the City.

3.4.9 Action by the Governing Body

- A. Before taking action on a plan amendment, the governing body shall consider the recommendations of the Planning Commission and Planning Director, and shall conduct a public hearing.
- B. Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
- C. It is expected that the applicant or a representative of the applicant will appear at the meetings to explain why the plan should be changed.
- D. Following the public hearing, the governing body may approve the amendment, deny the amendment, or send the amendment back to the Planning Commission for additional consideration.
- E. An approval shall be by written resolution. The approval may be contingent upon conditions specified by the governing body. The effective date may be immediate or may be a date otherwise specified in the approval.

3.4.10 Evaluation and Assessment Report

- A. Annually, the Planning staff will prepare an Evaluation and Assessment Report (EAR) for review and approval by the governing bodies. The EAR will include, at a minimum, the following:
 - 1. A rectification of any differences between the adopted Future Land Use Map of the City and County;
 - 2. A report on the progress of policies within the Durham Comprehensive Plan;
 - 3. Proposed changes to the policies of the Durham Comprehensive Plan that are primarily technical in nature, if any;
 - 4. A summary of land use trends and issues that developed over the previous year; and
 - 5. Technical updates to the Future Land Use Map;
 - a. Amendments to the Recreation and Open Space layer, if needed, to conform to the most recent Special Flood Hazard Area designation by the Federal Emergency Management Agency;

- b. Amendments to the Recreation and Open Space layer to include those properties for which a conservation easement has been recorded with the Register of Deeds; and
 - c. Amendments to the Agricultural layer to include those properties for which an agricultural easement has been recorded with the Register of Deeds.
 - B. The governing bodies shall hold public hearings for the approval of the EAR. Notification of the public hearings shall be pursuant to paragraph 3.2.5, Notice and Public Hearings.

3.4.11 Amendments to the Text of the Comprehensive Plan

A. Submittal

Applications submitted by a private individual or entity shall first be considered for appropriateness and priority by the Joint City-County Planning Committee (JCCPC) on an annual basis.

1. Staff shall provide the JCCPC with a preliminary analysis for each application;
2. Staff shall set annual deadlines for application submittals.
3. Fees shall be paid upon application submittal. Notification fees can be refunded upon request of the applicant if the applicant withdraws the application within two weeks from the date the JCCPC has provided final comment on the application.

B. Review Criteria

The following criteria, as applicable, shall be addressed by the applicant:

1. The proposed amendment corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed amendment is in response to changes in state law;
3. The proposed amendment constitutes a substantial benefit to Durham as a whole and is not solely for the good or benefit of a particular landowner or owners at a particular point in time;
4. The proposed amendment is consistent with other identified Plan policies and adopted area plans; and
5. The impact of the proposed amendment with regard to:
 - a. Established property or proposed development in the vicinity of the proposed amendment;
 - b. Existing or future land use patterns;
 - c. Existing or planned public services and facilities;
 - d. Existing or planned roadways;
 - e. The natural environment, including air, water, noise, stormwater management, wildlife and vegetation; and
 - f. Other policies of the Comprehensive Plan.

Sec. 3.5 Zoning Map Change

3.5.1 Description

A. Purpose

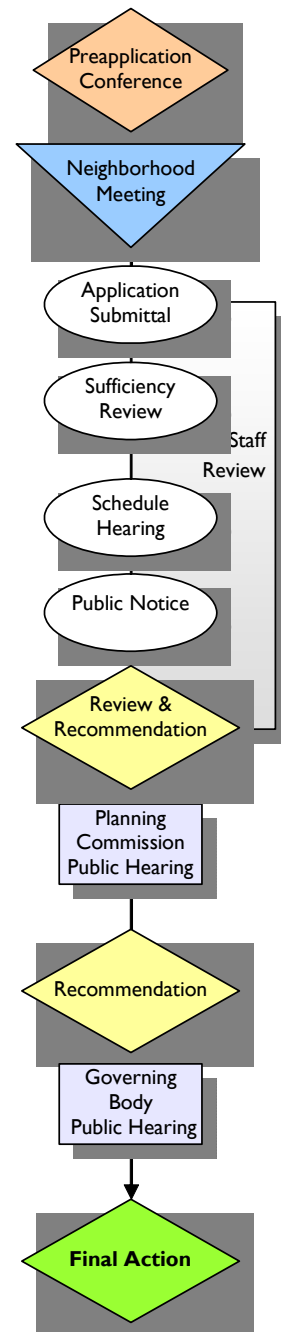
The purpose of a zoning map is to amend the zoning district boundaries of the Official Zoning Map.

B. Initiation

A zoning map change may be initiated by the governing body, the Planning Commission, the Board of Adjustment, the Planning Director or designee, a citizen or the property owner or their agent, except that a petition for a zoning map change with a development plan may only be initiated by the property owner or their agent.

C. Development Plans

A development plan provides additional information with a zoning map change petition. The purposes of the development plan are set forth in paragraph 3.5.6, Development Plan. The development plan establishes the level of development that will be allowed on the property. Subsequent site plans or plats shall not deviate from the plan, unless otherwise allowed, or required under this Ordinance. Deviation may require a zoning map change, as established in paragraph 3.5.12, Deviations from Approved Development Plans. Unless a development plan also functions as a site plan, it is not a site specific development plan. The right to develop pursuant to a development plan, whether approved under this Ordinance or any previous ordinance, accrues only for any portion of the plan for which a site plan or preliminary plat is approved, and then only for the period of validity specified in this Ordinance, or where a vested right is established pursuant to Sec. 3.20, Statutory Vested Rights Determination.



D. Mandatory Development Plans

The development plan may be used by the petitioner in any zoning district; however, the development plan shall be required in the PDR, CC, MU, and IP districts and in the RS-M district if the applicant proposes to develop a building greater than 35 feet in height or proposes a density greater than eight units per acre. A development plan shall be required for additions to the UC District after the initial zoning map change *establishing the District on each campus. Development plans may also be required as otherwise set forth in this*

Ordinance. The development plan shall become a part of the zoning map change petition and shall be reviewed concurrently with the zoning map change petition.

E. Traffic Impact Analysis

A traffic impact analysis may be required if the proposed zoning map change meets the threshold requirements established in Sec. 3.3, Traffic Impact Analysis

3.5.2 Pre-Application Conference

- A.** Pursuant to paragraph 3.2.2, Pre-Application Conference, a pre-application conference is required prior to the submittal of a zoning map change application.
- B.** If a zoning map change application is not submitted within six months of the date of the pre-application conference, a new pre-application conference is required.

3.5.3 Neighborhood Meeting

An applicant petitioning for a zoning map change that requires a TIA pursuant to Sec. 3.3, Traffic Impact Analysis, shall hold a neighborhood meeting as set forth in paragraph 3.2.3, Neighborhood Meeting.

3.5.4 Coordination with the Comprehensive Plan

- A.** All petitions for zoning map change shall be consistent with the Comprehensive Plan. A petition for zoning map change shall not be approved by the governing body when there is a conflict with the Comprehensive Plan, as determined by the Planning Director or designee (see Sec. 3.4, Comprehensive Plan Amendment).
- B.** When required, an application for a plan amendment shall be submitted and reviewed concurrently with an application for zoning map change. The public hearings on both the plan amendment and zoning map change may be heard at the same meeting. The decisions, however, shall be rendered with separate motions.

3.5.5 Application Requirements

- A.** An application for zoning map change shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
- B.** Zoning map changes should correspond with the boundary lines of existing platted lots or tracts. If the boundaries of a zoning map change request stop short of an exterior property line, that portion of the property outside the proposed zoning map change boundary shall be capable of being subdivided and developed in accordance with the existing zoning and other requirements of this Ordinance.
- C.** All zoning requirements shall be met within the boundaries of the area being proposed for change, unless the area being changed is utilizing a development plan and is an addition to an existing area zoned with a development plan. If all of the requirements cannot be met on the site being changed, the zoning map change shall be expanded to include necessary property being used to meet zoning requirements. Projects utilizing a development plan may be expanded without meeting this criteria if, considering the original development plan area, the requirement can be met without violating any committed elements. Projects utilizing this provision shall provide graphics and/or a chart demonstrating how the requirements are met.
- D.** If the boundaries of a zoning map change request in process are modified so as to 1) remove property from the request, and 2) have the effect of separating other adjoining properties

from the boundaries of the modified request, that change shall be considered a substantial change from the original request and shall result in the modified request being considered a new zoning map change request and requiring resubmittal with a new application and applicable fees.

3.5.6 Development Plan

A. Purpose

A development plan is intended to identify commitments that are equal to or greater than Ordinance requirements, including but not limited to:

1. Intensity/density of the proposed development;
2. Sensitive areas and related protection;
3. Any limitations on number, type, or range of uses;
4. Dedications or reservations;
5. Design elements if required or otherwise provided; and
6. Development phasing if required or otherwise provided.

B. Designation/Effect

When a proposed zoning map change includes a development plan, the letter “D” shall follow the proposed zoning district designation. If approved, the letter “D” shall remain as a part of the zoning designation of the property. The elements submitted as part of the development plan, called "commitments", are binding and establish the level of development permitted on the property absent further zoning action except as otherwise allowed or required under this Ordinance. "Commitments" may also be identified as "committed elements" throughout this Ordinance.

C. Authority of Planning Director

The Planning Director is authorized to:

1. Delegate authority under this section to a designee;
2. Determine whether modification of an unapproved development plan or deviation from an approved development plan is significant/substantial or minor, or more or less stringent, if not specified in this section;
3. Interpret commitments;
4. Determine whether a conflict exists between commitments. Any conflict between commitments, including design commitments, shall be resolved in favor of the most stringent;
5. Determine whether an element is a commitment if it is not specified as such in this section; and
6. Determine whether additional staff review time is necessary following addition of commitments at hearings through proffers or illustrative graphic depictions. Such determination may require consultation with other departments.

D. Requirements

A development plan shall comply with all applicable laws and guidelines. Requirements under this section shall consist of the following, which may be supplemented by guidelines of the Planning Department.

1. A development plan shall be signed and sealed by a Professional Engineer, Registered Architect, or Registered Landscape Architect. All graphic depictions shall be accurately scaled, and separate or additional sheets may be required by the Planning Department.
2. A development plan shall include a signed request from each property owner that the development plan be approved. A request from an owner's representative is unacceptable unless a document establishing legal authority to act as representative is included.

3. Existing Information

A development plan shall include an existing conditions survey that depicts conditions at time of plan submittal and is signed and sealed by a licensed Professional Land Surveyor, Engineer, or Landscape Architect. A separate existing conditions sheet may also be included. Such document(s) shall provide at least the following information:

- a. All site location information, including vicinity map, property identification numbers, ownership, metes and bounds, and north arrow;
- b. Acreage of the entire site, approximate acreage of the area within each zoning district or overlay on the site, and approximate acreage of area within floodway, floodway fringe, non-encroachment area, or non-encroachment area fringe on the site;
- c. Existing zoning districts and overlays on the site and all adjoining properties, including properties separated by easements or rights of way;
- d. The owners of all adjoining properties, including properties separated by easements or rights of way;
- e. Existing manmade and natural conditions on the site and within 100 feet of the site on adjoining properties, including properties separated by easements or rights of way. Those existing conditions shall include but are not limited to:
 - (1) Amount and location of impervious surface;
 - (2) Topography including steep slopes;
 - (3) Special Flood Hazard Areas and Future Conditions Flood Hazard Areas;
 - (4) Streams, wetlands, and other water bodies;
 - (5) Plans with building envelopes instead of building footprints: Existing trees on the subject property shown on a generalized tree survey that describes the existing vegetation, indicating the range of species and approximate sizes (dbh) of trees;
 - (6) Sites identified in the Durham County Inventory of Important Natural Areas, Plants and Wildlife (Inventory);
 - (7) Historic sites or structures currently designated in, or eligible for, the National Register of Historic Places;

- (8) Sites identified in the Durham Architectural and Historic Inventory;
- (9) Sites identified in the Durham County Archaeological Inventory and other identified archaeological sites, including cemeteries and burial grounds;
- (10) Other protected areas; and
- (11) Existing utility and access easements and rights of way.

f. Adopted plans, including transportation plans, that apply to the site.

4. Minimum Commitments

A development plan shall depict the following proposed elements, as applicable, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments:

- a. Zoning districts and overlays on the site;
- b. Intensity/density for each zoning district or overlay (square feet if non-residential, units if residential);
- c. For non-residential or multi-family development, building and parking envelope;
- d. Project boundary buffers, including any located off-site, depicted by border lines and indicating minimum committed width. Illustrative representations of vegetation shall not be used. A buffer reduction may only be requested if the minimum committed width that reflects the possible reduction is depicted. Any such width shall be labeled "width if reduced";
- e. General location of each stream crossing;
- f. General location of access points and connections to existing roads;
- g. Dedications or reservations made for consistency with adopted plans, including transportation plans, or as otherwise required by this Ordinance or other law;
- h. Railroad corridors as required under Sec. 12.6, Railroad Corridors;
- i. Maximum impervious area for the site and for each separately zoned portion of the site, indicated numerically within the overall site depiction and each portion;
- j. Areas committed for preservation, including but not limited to steep slopes; stream buffers; wetland buffers; Inventory sites; historic sites or structures currently designated in, or eligible for, the National Register of Historic Places; sites identified in the Durham Architectural and Historic Inventory; and sites identified in the Durham County Archaeological Inventory and other identified archaeological sites, including cemeteries and burial grounds;
- k. Tree preservation areas, tree replacement areas, and a generalized or specimen tree survey as required under paragraph 8.3.3, Tree Survey;
- l. For a manufactured home park or subdivision in a Planned Development Residential (PDR) district, the information required under paragraph 5.3.2E, Manufactured Home Park or Subdivision, and paragraph 6.11.3, Planned Development Residential (PDR);
- m. For all development in a PDR district, the information required under paragraph 6.11.3, Planned Development Residential (PDR);

- n. For all development in a Commercial Center (CC) district, the information required under paragraph 6.11.5, Commercial Center (CC);
- o. For all development in an Industrial Park (IP) district, the information required under paragraph 6.11.6, Industrial Park (IP); and
- p. For all development in a Mixed Use (MU) district, the information required under paragraph 6.11.7, Mixed Use (MU).

5. Additional Commitments - Graphic

A development plan may depict additional proposed elements, including but not limited to the following, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments.

- a. Limitations on number, type, or range of uses, if not required under paragraph 3.5.6D.4, Minimum Commitments;
- b. General location of on- or off-site road improvements or pedestrian and bicycle systems;
- c. General location and area of open space, recreation areas, trails and greenways, tree preservation areas, or buffers other than project boundary or stream buffers;
- d. Buffer width or opacity that exceeds ordinance requirements;
- e. Landscaping features such as berms or vegetation types;
- f. Building specifications such as number, location, maximum floor area, or maximum height;
- g. General location and types of stormwater facilities and mechanisms for complying with paragraph 8.5.5, Diffuse Flow Requirements.
- h. Areas where mass grading will not occur; and
- i. For development plan proposals other than Design districts: Building or site design elements.

6. Additional Commitments - Text

A development plan may include additional proposed elements as text in side notes, provided they cannot legibly be included within, or do not reference, the graphic depiction. Such elements shall become commitments and shall be labeled "Text Commitments." Examples include description of off-site transportation infrastructure improvements, technical specifications that exceed ordinance requirements, description of elements not identified graphically, and additional description of elements identified graphically. Such elements shall not repeat ordinance requirements or contradict or diminish graphic elements.

7. SIA and TIA Commitments

A development plan shall include a Stormwater Impact Analysis and a Traffic Impact Analysis, if required, with measures required to address any identified deficiencies. Such measures shall be in text form, and may also be in graphic form as appropriate, and shall become commitments.

8. Design Commitments

Except for development plans proposed for a UC, UC-2, or Design district, the development plan for a project containing nonresidential or multifamily structures shall include design elements indicating how the project will relate to its environment (both built and natural). Such elements may be in graphic or text form as appropriate and shall become commitments. They shall be labeled "Design Commitments" and shall include, at a minimum:

- a. A description of the general architectural styles proposed for use in the buildings. This description shall include information on rooflines, building materials, and any distinctive architectural features; and
- b. A description of how the proposed design will fit into the context area, including information about transitions and relationships to existing developments.

9. Phasing Plans

- a. A phasing plan may be provided with any development plan, but shall be required in the following instances:
 - (1) Projects utilizing the Mixed Use District. The phasing plan shall ensure that residential and non-residential components are constructed to satisfy the intent and requirements of this district; and
 - (2) Development within the Suburban Transit Areas. The phasing plan shall ensure the existence of adequate available infrastructure for each phase and minimum required densities in a transit-supportive form at build-out.
- b. The phasing plan shall be in graphic or table form as appropriate and included in the development plan. It shall identify the sequence and timing of the development phases and include utility improvements, land use categories, and areas in square feet or acres. Phasing plan elements shall become commitments.

10. Uses and Minor/Major Special Use Permits

No minor or major special use permit is required for uses that otherwise need such a permit pursuant to paragraph 5.1.2, Use Table; Sec 5.3, Limited Use Standards; or for standards specified elsewhere within the Ordinance, if:

- a. The use or standard is specified on the approved development plan; and
- b. The location, access, building height, and size, as applicable, for the proposed use or standard is specified on the development plan.

E. Illustrative Graphic Depictions

Graphic depictions other than those listed above shall not be shown at, submitted at, or otherwise used in connection with any public hearing on a zoning map change with development plan unless they depict only area within the scope of the development plan and are development plan commitments in their entirety. Such graphic depictions shall supersede existing commitments, if conflicts exist, to the extent they are more stringent.

F. Development Plan as Site plan/Preliminary Plat

- 1. At the request of the applicant, a development plan may also serve as a site plan or preliminary plat. Such plan shall comply with both development plan and site plan or

preliminary plat requirements, as applicable, and shall undergo one review process. Such plan shall be deemed approved as both development plan and site plan or preliminary plat, as applicable, following development plan approval by the governing body. Fees shall be adjusted by the Planning Department in such cases.

2. Where a development plan also serves as a site plan or preliminary plat, any associated special use permit requirement shall be waived if the development plan contains commitments as to all use categories; intensity of all uses; location of all uses; building heights and areas; and number and location of parking spaces.

G. Modifications before Approval

1. Modifications to a development plan that are proffered at a hearing before the Planning Commission or governing body shall become additional commitments and shall supersede existing commitments, if conflicts exist, to the extent they are more stringent. Proffers that prove to be illegal or less stringent than existing commitments shall be referred back to the Planning Commission or governing body for an additional hearing.
2. Minor modifications may be made to a development plan after the Planning Commission recommendation and before the governing body hearing. Such modifications become additional commitments and shall supersede existing commitments, if conflicts exist, to the extent they are more stringent.
3. Significant modifications that are made to a development plan after the Planning Commission recommendation and before the governing body hearing shall be referred back to the Planning Commission for an additional hearing as required under paragraph 3.5.9B, Changed Application.

3.5.7 Deferral and Withdrawal of an Application for Zoning Map Change

A. Deferral Requests Approved by the Planning Director

1. Deferrals shall be granted by the Planning Director, or designee, under the following criteria:
 - a. The applicant or an opponent may each seek not more than one deferral for each zoning map change requested. No more than two deferrals (one each from the applicant and an opponent) shall be allowed per proposed zoning map change;
 - b. Each deferral request shall be for a maximum of one month. Any deferral request shall be made in writing, citing reasons for requesting the deferral; and
 - c. If the request for deferral is received by the Planning Director or designee and the reasons for the request are made in writing at least ten days, prior to the first Planning Commission or governing body meeting where the item would otherwise be considered.
2. Any other deferrals which do not meet the above criteria shall be treated as a continuance.
3. If notification of the hearing has already been sent by the time deferral is requested each request shall be accompanied by two sets of mailing labels imprinted with the names and addresses of all previously notified property owners and a fee equivalent to the postage required to re-notify the property owners.

4. The above procedures are not applicable to proposed zoning map changes that have been designated as “expedited” by a governing body.

B. Withdrawal Request by Applicant

1. The applicant petitioning for a zoning map change may withdraw the application provided that a written request stating the reason for the withdrawal is received by the Planning Director, or designee, at least ten days prior to the public hearing.
2. The request shall be accompanied by mailing labels imprinted with the names and addresses of the previously notified property owners and a fee sufficient to cover the postage for renotification of surrounding property owners if the withdrawal occurs after the Planning Commission hearing.
3. The applicant petitioning for a zoning map change with a development plan may withdraw the application at any time prior to the opening of the public hearing before the governing body by withdrawing consent to the development plan being imposed on the applicant’s property.
4. The governing body may vote to allow the applicant to withdraw an application for a zoning map change at any time.

C. Administrative Withdrawal

The Planning Director or designee may withdraw applications due to the failure of the applicant to submit required information within 90 days of a request for such information.

D. Resubmittal of Withdrawn Applications

Except in the case of an application where the applicant withdrew consent to a development plan, no application that was previously withdrawn may be resubmitted until at least 6 months have elapsed since the date of withdrawal. In the case of applications withdrawn as a result of the withdrawal of consent to a development plan after publication of a notice of a public hearing, no new application may be resubmitted until at least 12 months have elapsed since the date of withdrawal. The Planning Director or designee may waive this waiting period if the application has been substantially modified or if there has been a significant change in facts or circumstances since the application was withdrawn.

3.5.8 Action by the Planning Director

- A. The Planning Director or designee shall prepare a staff report that reviews the zoning map change request in light of any applicable plans and the general requirements of this Ordinance.

The staff report shall consider the entire range of permitted uses in the requested classification regardless of any representations made that the use will be limited, unless a development plan is submitted that restricts the permitted range of uses to specific uses. The staff report shall include an evaluation of the consistency of the requested classification with adopted plans and the impact of the requested classification on public infrastructure, as well as any specific requirements of the requested classification.
- B. The Planning Director or designee shall forward completed zoning map change requests and any related materials to the Planning Commission for a hearing and recommendation at the first regularly scheduled meeting following completion of the technical reviews by staff.
- C. The Planning Director or designee shall forward completed zoning map change requests and any related materials, including the Planning Commission recommendation, to the governing

body for a public hearing and decision prior to the first regularly scheduled meeting after the Planning Commission hearing.

3.5.9 Action by the Planning Commission

A. General Procedures

1. Before making any recommendation on a petition for zoning map change, the Planning Commission shall consider any recommendations from the Planning Director and shall conduct a public hearing where interested parties may be heard.
2. Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
3. Except in the case of expedited hearings pursuant to paragraph 3.5.9C, Expedited Hearings, the Commission shall make its recommendation within three consecutive regular Commission cycles (approximately 90 days total) of its initial public hearing. The time period for a recommendation may be altered, as in the case of significant modifications, in which case three additional-consecutive regular cycles shall be granted before the case shall go to the governing body.
4. When a recommendation is not made within the time periods established in this section, the governing body may process the request without a Commission recommendation.
5. A zoning map change proposed as a County case shall not require rehearing by the Planning Commission if the property subject to the proposed change is annexed into the City before the Board of Commissioners has acted on the case and the annexation is within 12 months of the original Planning Commission recommendation on the zoning map change, unless the applicant has made a significant modification to the application.

B. Changed Application

If the applicant makes a significant modification to an application for a zoning map change after the Commission has made its recommendation, the Planning Director shall refer the modified request back to the Commission for an additional public hearing. In such case, the Commission shall make a recommendation to the governing body within 90 days of the public hearing on the modified application. If a recommendation is not made within this time frame, the governing body may hear the application without a recommendation from the Planning Commission.

C. Expedited Hearing

1. If the governing body has set an expedited hearing concerning a request, in accordance with paragraph 3.5.11B, Expedited Hearing, a public hearing before the Planning Commission shall be held at the first available hearing date or prior to the hearing before the governing body.
2. The Commission shall make a recommendation at this hearing based on the Review Criteria in paragraph 3.5.10, Written Recommendation, Review Criteria, below. The Planning Commission shall not continue a request for which an expedited hearing has been set, nor shall any deferrals be granted for such a request.

3.5.10 Written Recommendation, Review Criteria

The Planning Commission shall provide a written recommendation regarding whether each proposed map change is consistent with the comprehensive plan and other applicable

adopted plans. The recommendation shall be based on the reasons articulated by Commission members voting in the majority, and the recommendation shall be developed as determined in the Commission's *Rules of Procedure*. In addition to plan consistency, Commissioners may also consider other matters deemed appropriate by the Commission, which may include but are not limited to:

- A. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood;
- B. Suitability of the subject property for uses permitted by the current versus the proposed district;
- C. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the City and County; and
- D. The availability of adequate school, road, parks, wastewater treatment, water supply and stormwater drainage facilities for the proposed use.

3.5.11 Action by the Governing Body

A. General Procedures

- 1. Before taking action on a zoning map change request, the governing body shall consider any recommendations of the Planning Commission, Planning Director or designee, and of staff agencies, and shall conduct a public hearing where interested parties may be heard.
- 2. Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
- 3. Continuances may be granted before action on the request.
- 4. Following the public hearing, the governing body may approve the request, deny the request, or send the request back to the Planning Commission for additional consideration.
- 5. In adopting or rejecting a zoning map change, the governing body shall adopt a statement describing whether its action is consistent with the Comprehensive Plan, and why the action is reasonable and in the public interest. The governing body may adopt the statement furnished by staff or agencies, including but not limited to the Planning Director or the Planning Commission, or it may formulate its own statement.
- 6. The map change request approved by the governing body may include changes from the request presented. Changes to a development plan may be made upon the proffer by the applicant of such changes.
- 7. Approval of a petition gives the applicant the ability to proceed with any additional required approvals.

B. Expedited Hearing

- 1. The governing body, in situations in which it determines certain standards have been met, may expedite the hearing process on a proposed or prospective zoning map change.

2. The governing body may consider a written request from a potential applicant, or from staff, requesting an expedited hearing process. The request shall identify and support the reasons for such expedited consideration.
3. An expedited hearing shall not be granted when a Comprehensive Plan amendment is required, or when a Traffic Impact Analysis is required.
4. In order to grant the request, the governing body shall find that at least one of the criteria below have been met:
 - a. Deadlines set by the local, State or Federal government for receipt of applications for needed funding, designation or other regulations concerning the property make expedited consideration necessary;
 - b. The prospective zoning map change request results from an emergency beyond the control of the applicant, such as response to a disaster;
 - c. The prospective zoning map change request addresses an urgent matter of public health or safety; or
 - d. There are special circumstances that will have a substantial negative impact on the development which could not have reasonably been anticipated and which make expedited consideration necessary.
5. In no event may the governing body hearing occur less than 30 days after the item was granted expedited status. .

3.5.12 Deviations from Approved Development Plans

A. Significant Deviations

The deviations from an approved development plan listed below are deemed significant and shall require that the entire plan be resubmitted for a zoning map change in accordance with the application requirements of this section, except as specified in paragraphs B, C, and D below. Deviations not listed below do not require a zoning map change unless they are otherwise deemed significant or substantial:

1. Increase by any amount in the number of residential units or approved density of residential projects in the overall project, except through use of the density bonus pursuant to Sec. 6.6, Affordable Housing Bonus;
2. Decrease by more than 20% in total density in residential projects, except in the Downtown Tier or Compact Neighborhood Tier;
3. Decrease by more than 5% in total density in residential projects located within the Downtown Tier or Compact Neighborhood Tier, unless that decrease results from the application of UDO requirements relating to size or design;
4. In a nonresidential or mixed-use development, a cumulative expansion adjacent to a residential district or use that exceeds 5% of total building floor area or 4,000 square feet, whichever is greater, or a cumulative decrease that exceeds 20% of total building floor area if creating or maintaining intensity was important to the zoning map determination;
5. With regard to development plans that were approved before commitments, or committed elements, were required to be identified on development plans, any change to a development plan depiction that exceeds current Ordinance requirements for

setbacks, open space, buffer width or planting, recreation areas, tree protection areas, landscaped areas, or limitations on height, unless such depiction is clearly identified as "conceptual" or "illustrative";

6. Elimination or reduction of a dedication of right-of-way, greenway, or other public component;
7. A change in the proposed phasing of the project where phasing plans are required or are commitments;
8. A change in use category (for example, residential to office, office to commercial, commercial to industrial, as described in Article 5, Use Regulations), if limitations on the number, range, or types of uses were proposed with the development plan and the governing body limited its consideration of uses to those uses;
9. A change in the number, location, or configuration of access points to the development; or a change to previously shown public road improvements;
10. A change in the location, square footage, or size of a building adjacent to a residential district or use;
11. A change in the architectural design or architectural guidelines unless explicitly indicated as "conceptual" or "illustrative";
12. If a Traffic Impact Analysis was originally submitted, a change that would increase the total vehicle peak hour trips by 3% or greater. If a Traffic Impact Analysis was not originally submitted, a change that would require a Traffic Impact Analysis;
13. An increase of more than 3% in impervious surface area; and
14. Any change that is otherwise prohibited under this Ordinance.

B. Changes to Portions of Development Plans

1. Where a deviation is proposed from a portion of a development plan, for example from one phase or zoning district, the Planning Director may consider cumulative deviations and the impact of such portion on the overall development in a significance assessment. If the deviation is deemed significant, the Planning Director shall determine whether it requires a zoning map change to all or only a portion of the development plan.
2. A petition to change a development plan must include the previously approved development plan documents in its entirety with elements proposed for change clearly delineated (graphically and in text format). Previously approved documentation will be replaced in its entirety with the modified development plan.

C. Changes Following Transfers to Residential Owners

Where a deviation is proposed from a development plan and a portion of the development has been transferred to a residential owner, the Planning Director may exclude such residential portion from a significance assessment if it meets all minimum ordinance requirements. If the deviation is deemed significant, the Planning Director shall determine whether it requires a zoning map change to all or part of the development plan.

D. Changes Required by Ordinance or Other Law

Notwithstanding the other requirements of this section and except as stated below, a site plan or preliminary plat shall deviate from an approved development plan to conform to the requirements of a new ordinance or other law adopted after development plan approval,

and a zoning map change shall not be required. Exceptions are: 1) where the development plan is vested by the appropriate governing body pursuant to the statutory vested rights procedure; and 2) as authorized under paragraph 1.10.3A, Approved Site Plans, Plats, and Permits and Completed Applications. Under such exceptions, the site plan or preliminary plat may conform to the approved development plan.

3.5.13 Protest Petition Sufficiency and Procedures

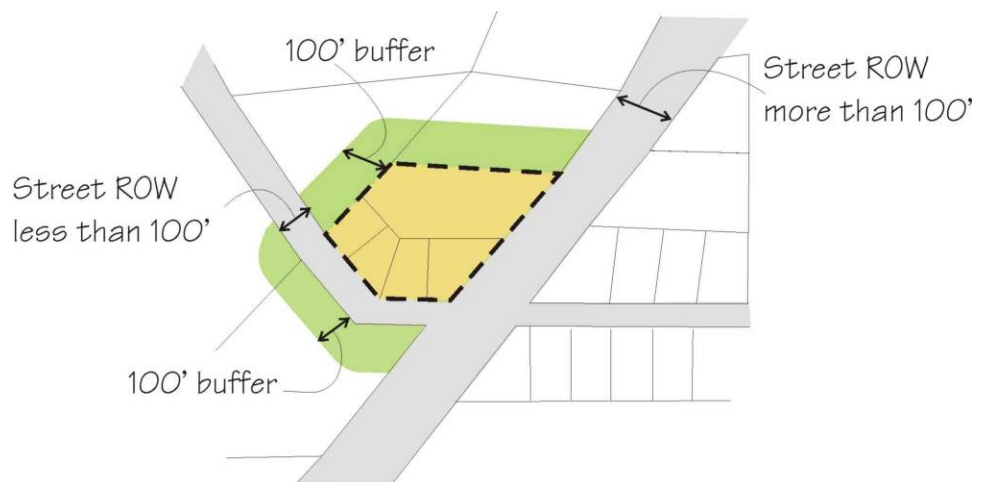
A. Protest Petition Defined

A petition in opposition to a zoning map change shall be considered a "valid protest petition" if the petition meets the requirements of applicable state law.

Commentary: Session Law SL2015-160 repealed the protest petition process for municipalities, effective upon zoning map change applications submitted after August 1, 2015. This law did not repeal Session Law SL2010-80, which allows protest petitions for zoning map change applications within Durham County's jurisdiction.

B. Standards

1. The petition must meet the substantive requirements of GS 160A-385(2) or Session Law 2010-80, as appropriate, and in particular must be signed by the owners of either:
 - a. 20% or more of the area included in the proposed change or
 - b. 5% of the area of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. In evaluating the sufficiency of a protest under this provision:
 - (1) A discrete or separate area shall be calculated for any noncontiguous part of an area proposed for zoning map change that is physically separated from other areas proposed for change by property (not including right of way) that is not part of the requested zoning map change;
 - (2) A street right of way shall not be considered in computing the 100 foot buffer area as long as the street right of way is 100 feet wide or less.
 - (3) When less than an entire parcel of land is being rezoned, the 100 foot buffer shall be measured from the property line of the entire parcel.



2. Property Ownership

Property ownership shall be determined based on available recorded property records. In the event of records that are incomplete or in conflict, County tax listings may be used to determine ownership.

3. Other Required Information

The petition shall contain all information required on the form supplied by the Planning Director or designee or the City Clerk or the Clerk to the Board of Commissioners, as appropriate.

C. Procedure

1. A form for a protest petition shall be available from the Planning Director, or designee, or the City Clerk or the Clerk to the Board of Commissioners, as appropriate.
2. Completed petitions shall be submitted to the appropriate Clerk's office (City Clerk or Clerk to the Board of Commissioners) at least four working days prior to the day of the public hearing.
3. The Planning Director, or designee, in consultation with the Attorney for the jurisdiction shall determine if the petition meets the criteria for classification of "valid protest petition". The Clerk shall inform the governing body that a petition has been filed and indicate the determination by the Planning Director, or designee, whether the petition is valid or invalid. The Planning Director, or designee, shall notify the petitioner as to the validity of the protest petition.
4. Where a substantial modification to a zoning map change application that requires resubmission to the Planning Commission has been submitted, the Planning Director, or designee, shall notify the petitioner, in writing, that a new protest petition is required.
5. Petitions for zoning map change for which a protest petition has been determined to be valid shall require a $\frac{3}{4}$ vote of the governing body for approval rather than a simple majority. Vacant positions and members who have been excused from voting because of a conflict of interest shall not be considered in computing governing body membership.

D. Withdrawal

Persons or entities who have signed protest petitions may withdraw their signatures at any time prior to the vote on the proposed map change. Any withdrawal must meet standards established for such withdrawals by the Planning Department. Withdrawals submitted less than two working days prior to the public hearing may result in a continuance of the hearing if the effect of the withdrawal on the validity of the protest cannot be determined prior to the public hearing.

E. Exemption

The foregoing provisions concerning protest petitions shall not be applicable to any zoning map change that establishes the City's zoning designation on property that has been added to the City's jurisdiction as a result of annexation, except as provided by general or local law.

3.5.14 Coordination with Site Plans

Approval of a zoning map change with a development plan shall enable the owner or an authorized agent of the owner to prepare a site plan in conformance with the zoning map change and development plan for the property. The site plan may be prepared for the entire property or phases of the development project in accordance with Sec. 3.7, Site Plan Review.

3.5.15 Subsequent Applications

When the governing body has taken action on a zoning map change, no new application may be filed for a similar zoning map change until at least 12 months have elapsed since the date of the previous action. The Planning Director, or designee, may waive this requirement if the application has been significantly modified or there has been a significant change in the facts or circumstances since the previous request.

Sec. 3.6 Subdivision Review

3.6.1 Applicability

- A.** Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street right-of-way or a change in existing street right-of-way. Subdivision approval shall be required before the division of land (for any purpose) into two or more parcels, except as specified in paragraph 3.6.2, Actions Exempt from Subdivision Requirements.
- B.** All requirements imposed through a plat shall run with the land and shall apply against any owner, subsequent owner, or occupant.

3.6.2 Actions Exempt from Subdivision Requirements

- A.** The following shall not be considered “subdivision” and are exempt from the provisions of this section:
 - 1.** The combination or recombination of lots, or portions of lots, previously created and recorded, if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Ordinance;
 - 2.** The division of land into parcels greater than ten acres if no street right-of-way dedication is involved;
 - 3.** The acquisition of strips of land for public easements, including the widening or opening of streets or the location of utility right-of-way; and
 - 4.** The division of a tract in single ownership of which the entire area is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of this Ordinance.
- B.** No review or approval is required for exempt subdivisions; however, Planning Director, or designee, certification of exempt status is required. Exempt subdivision plats shall be stamped by the Planning Director or designee, noting their exemption, and signed so that they can be recorded by the Office of the Register of Deeds.

3.6.3 No Subdivision without Plat Approval

- A.** No subdivision of land within the jurisdiction of either the City or County may be filed or recorded with the Office of the Register of Deeds until it has been submitted to and approved by the Planning Director or designee, and until the approval is entered on the face of the plat.
- B.** Any person who, being the owner or the agent of the owner of any land located within the jurisdiction of this Ordinance, subdivides land in violation of this Ordinance, or transfers, or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this Ordinance, and recorded in the Office of the Register of Deeds, shall be guilty of a misdemeanor and shall be punishable, accordingly, by fine or imprisonment.
- C.** The description by metes and bounds in the instrument of transfer, or other document used in the process of selling or transferring land, does not exempt the transaction from penalties.

The City or County, as appropriate, may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order for compliance.

3.6.4 Conservation Subdivision an Preliminary Plat Pre-Application Conference

All applicants considering petitioning for a conservation subdivision or any other preliminary plat pursuant to paragraph 3.2.2, Pre-Application Conference, shall schedule a pre-application conference with the Planning Director, or designee to discuss the procedures, standards, and regulations required for subdivision approval in accordance with the provisions of this Ordinance.

3.6.5 Sketch/Concept Plans

It is recommended, but not required, that the applicant applying for subdivision approval submit a sketch/concept plan for review by the Planning Director or designee. This plan should, in simple sketch form, show the proposed layout of streets, lots and other features in relation to existing conditions.

3.6.6 Preliminary Plat Requirements

An application for preliminary plat review shall be submitted in accordance with paragraph 3.2.4, Application Requirements. Preliminary plat documents showing the proposed subdivision of the land into lots shall contain, as a minimum, the information listed below unless the Planning Director, or designee, makes the determination that less detailed information is required for adequate review. No processing or review of a preliminary plat will proceed without the required information. Detailed standards and specifications for design and construction are available from City, County and State agencies, as applicable.

A. General Requirements

1. Title Block - Name of project, labeled: Preliminary Plat; submittal and revision dates; sheet size (36" x 48" maximum) with index map and match lines if multiple sheets are required; graphic scale (not smaller than one inch to 200 feet on a standard engineering scale); north point; property identification number; vicinity map clearly establishing the location of the proposed project, with readily recognizable landmarks, stream buffers, flood plain boundaries, property zoning districts and any overlay zones.
2. Name, address and telephone number of owner, applicant and agent; name, address and telephone number of surveyor, engineer, landscape architect, or other designer, with seal.
3. In addition, State or Federal regulations may require that additional information be supplied to the Planning Department as a part of a submittal.

B. Existing Conditions

1. Boundary of the property, using metes and bounds with angle of departure of adjacent properties; site size and amount to be developed; lot lines; building foot prints and square footage; improvements, such as loading areas, parking areas, driveways, alleys, streets, sidewalks, etc.; any septic tanks, drain fields and wells; culverts and other subsurface features; all utility easements, above and below ground, including information on type, size, and elevation; railroads; cemeteries; setback requirements; zoning of the site and adjacent zoning, including any overlay zones; land use of the site and adjacent land uses including major improvements within 50 feet of the subject

property; adjacent property owners; adjacent streets, including name and right of way width. Existing features shall be clearly distinguishable from proposed development.

2. Topographic contours at two foot intervals for all property within 100 feet of a proposed development area and topographic contours at five foot contour intervals for the remainder of the property including a source reference; locations and names of water features including shorelines, water bodies, intermittent and perennial streams; a specimen tree survey; locations of drainage ways, stream buffers, floodways, floodway fringes, wetlands and wetland buffers; locations of vegetation, rock outcrops, steep slope areas, Durham Natural Inventory sites and Durham Historic Inventory Sites.
3. A list of any conditions applied to the property as part of any previous approvals.

C. Proposed Conditions

1. *Street Improvements (Public and Private)*: location of improvements or widenings, names, widths of rights of way and pavement, design criteria including sight triangles and a typical cross section; Traffic Impact Analysis, if required.
2. *Pedestrian Circulation*: location of sidewalks and other pedestrian ways including dimensions and surfacing, along streets and other locations; provision of crosswalks.
3. *Landscaping*: location of all plant materials and other landscaping features, including calculations of amount required and the amount provided; the number, size, and description of plant materials, fences, walls and berms; provisions for screening specialized features, such as storage areas; calculations of the amount of tree coverage required and the amount and percentage of tree coverage provided by tree preservation and tree replacement; calculation of the amount of street trees and the amount provided by tree preservation and tree installation; a land disturbance tree survey; and the location and a description of all proposed and required tree protection measures.
4. *Grading*: location of vegetation to be retained including approximate sizes and protection measures to be used; a depiction of contours at two foot intervals, supplemented with spot elevations when necessary, including location, description, and size of any retaining walls; dimensions of stream buffers.
5. *Utilities*: location and width of all easements and rights of way for water, sewer, storm sewers, gas, electric, communication facilities, or any other utility facility.
6. *Storm Drainage*: location and description of temporary and permanent storm drainage pipes and swales; amount of impervious surface; provisions for erosion and sedimentation controls, including retention and detention facilities; mechanisms for complying with paragraph 8.5.5, Diffuse Flow Requirements; as well as professionally sealed engineering calculations used in the design.
7. *Water and Sewer*: location and description of public and private water and sanitary sewer improvements including connections to existing facilities and maintenance provisions.
8. *Property Dedications/Reservations*: location and description of dedicated or reserved properties under public or private ownership including the boundaries, size, purpose, future ownership and maintenance provisions for the property. This category includes but is not limited to thoroughfares, rail corridors, greenways, recreation facilities, open space and common areas.

9. Specific performance standards as required by other Articles of the UDO.
10. Within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas: demonstration that the subdivision will minimize flood damage through the location and construction of all public utilities and facilities, including water and sewer systems; adequate drainage in accordance with adopted standards to reduce exposure to flood hazards.

D. Traffic Impact Analysis

A traffic impact analysis (TIA) pursuant to Sec. 3.3, Traffic Impact Analysis (TIA) may be required.

3.6.7 Preliminary Plat Approval

A. Applicability

1. A preliminary plat shall be required for all subdivision of land within the jurisdiction of this Ordinance for developments of more than six lots. A preliminary plat is optional for development of six lots or less with no public dedication of land, no streets, no utility extensions, no required diffuse flow mechanisms, and no required stormwater management facilities.
2. Subdivision approval requires the submission of both preliminary and final plats and full interagency review for conformity with the requirements of this Ordinance and other development-related ordinances.
3. Where site plans, as required by this Ordinance, serve as preliminary plats for subdivisions, they shall satisfy these submission requirements in addition to those required for zoning compliance.

B. Public Notice

Any organization or individual that is registered to receive notice pursuant to paragraph 3.2.5D, Registration to Receive Notice, and is located within 1,000 feet of the site under consideration shall receive notice for any preliminary plat application involving criteria for major site plans pursuant to paragraph 3.7.3B, Major Site Plans. Notice shall be provided to each organization or individual in the manner specified in its registration information, which may be first class mail, electronic mail, or other manner offered by the Planning Director.

C. Action by the Planning Director

1. Staff review agencies shall complete review and transmit comments back to the Planning Director or designee.
2. If the applicant fails to submit revised plats in response to the comments of the staff review agencies within 90 days of receiving such comments from the Planning Director, or designee, the Planning Director shall consider the application to have been withdrawn by the applicant. An extension period may be granted by the Planning Director or designee.

D. Action by the Approving Authority

The preliminary plat shall be approved by the approving authority if it meets the following criteria:

1. Conforms with all the provisions and requirements of applicable adopted plans, including but not limited to the Comprehensive Plan, historic preservation plans, open

space plans, greenways plans, transportation plans, gateway plans, corridor plans, collector street plans, and bicycle plans;

2. Conforms with all the provisions and requirements of this Ordinance; and
3. Conforms with all the provisions and requirements of other applicable ordinances not included in this Ordinance.

E. Reservation of Public Facility Sites and Lands

This section does not apply to the reservation of lands for public streets and roads.

1. The review of preliminary plats may be delayed by no more than 45 calendar days if the proposed subdivision contains sites which appear in an adopted plan or policy documents as a future site for a public school or other public facility, recreation area, park, greenway or other open space. During preliminary plat review, the appropriate entity responsible for future site acquisition shall be given 45 calendar days from date of plat submission to decide if it wishes to reserve the site.
2. If the site is not to be reserved, the subdivision shall be processed in the normal fashion. If the agency wishes to reserve the site and specifies such intent in writing to the Planning Director or designee, the subdivision shall not be approved without the reservation.
3. Public school authorities shall have 18 months from the date of preliminary plat approval to acquire the site by purchase, by receipt of dedication, or by initiating condemnation proceedings. If, at the end of the 18-month period, none of the above actions has occurred, the subdivider may consider the land free from reservation and apply for revised preliminary plat approval for its use.

Commentary: See NC General Statutes 153A-331 and 160A-172.

4. Public agencies other than schools shall have 120 calendar days from the date of preliminary plat approval to arrange for site acquisition for public facilities by option to purchase, by purchase, by receipt of dedication, or by initiating condemnation proceedings. If, at the end of the 120-day period, none of the above actions has occurred the subdivider may consider the land free from reservation and apply for revised preliminary plat approval for private use of the property.

F. Issuance of Required Permits

Upon preliminary plat approval, the applicant may apply for the required permits to begin site work and the installation of improvements. All site work shall be performed in compliance with the requirements of this section and other applicable regulations of the city, county, and state. No required permit may be issued until the required preliminary plat is approved.

G. Preliminary Plat Revisions

1. Minor revisions to approved preliminary plats, which reflect the same basic street and lot configuration as used for the original approval, may be approved by the Planning Director or designee.
2. Significant changes to an approved preliminary plat, as determined by the Planning Director or designee, shall be resubmitted for review and approval as if it is a new application.

H. Continuing Validity of Preliminary Plat

1. An approved preliminary plat shall retain its validity for four years, if:
 - a. A permit to begin development pursuant to the plat, such as a land disturbance permit, a building permit, or an improvement permit has been issued and has remained continuously valid thereafter; and,
 - b. Building or land disturbing activity has begun on the property.
2. The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the preliminary plat for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.
3. Preliminary plat amendments shall not extend the validity of the original approved preliminary plat.

3.6.8 Final Plat Approval

A. Applicability

A final plat shall be required for all subdivision of land within the jurisdiction of this Ordinance except as allowed under North Carolina General Statute.

B. Conformity with Preliminary Plat

The final plat shall conform to the approved preliminary plat, if any, and may constitute only that portion of the preliminary plat which is proposed for recordation.

C. Application Requirements

1. When the installation of required site improvements is nearing completion, the subdivider shall submit a final plat for review and approval.
2. An application for final plat approval shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
3. The final plat shall be drawn in accordance with North Carolina General Statute 47-30, Plats and Subdivisions-Mapping Requirements; standard land surveying and mapping practices; and city/county engineering standards.

D. Endorsements on Final Plats

The following certificates shall be placed upon all final plats:

1. Certificate of accuracy and mapping signed by a registered surveyor;
2. Certificate of ownership and dedication signed and notarized, including all individuals, partnerships, and corporations, and lenders with financial security interests;
3. Attorney's certification of ownership for any final plat involving a right-of-way dedication signed and notarized; and
4. Review officer's certification.

E. Action by the Planning Director

Staff review agencies shall complete review and transmit comments back to the Planning Director, or designee. The Planning Director or designee shall approve the plat as is, defer action for additional information and corrections, or disapprove it. If the final plat is

disapproved or deferred, the Planning Director or designee shall notify the applicant of the reasons for such disapproval or deferral. The final plat shall be approved by the Planning Director or designee if it meets the following criteria:

1. Conforms with all the provisions and requirements of applicable adopted plans, including but not limited to the Comprehensive Plan, historic preservation plans, open space plans, greenways plans, transportation plans, gateway plans, corridor plans, collector plans, and bicycle plans;
2. Conforms with all the provisions and requirements of this Ordinance;
3. Conforms with all the provisions and requirements of other applicable ordinances not included in this ordinance;
4. Conforms with the preliminary plat, if any;
5. Conforms with completed and approved construction drawings for public infrastructure, where such construction drawings are required by this Ordinance or other applicable ordinance; and
6. Is accompanied by a bond or other performance guarantee deemed adequate in amount and form by the requesting department, if required infrastructure, including but not limited to stormwater, street, or water and sewer improvements, has not been completed in accordance with approved construction drawings, and if the department responsible for such infrastructure has consented to final plat approval pending its completion.

F. Issuance of Certificate of Compliance

1. Necessary Infrastructure

- a. If a final plat for a project has been approved prior to completion of stormwater facilities, water and sewer utilities, streets, sidewalks, and recreation facilities, certificates of compliance shall not be issued and permanent water or sewer service shall not be provided for buildings within the platted area until completion of required improvements except as further provided in paragraph b. below.
- b. If the director or designee of the department responsible for acceptance or regulation of the required infrastructure determines in his/her reasonable discretion that delay will improve the quality of the infrastructure or will conserve resources, he/she may allow certificates of compliance to be issued. In such case, the responsible director or designee may require supplementation of the performance guarantee(s) that was provided prior to final plat approval, and shall, in addition, set a date by which the necessary infrastructure shall be completed. Examples of improvement for which delays may be granted include completing stormwater facilities after they are no longer needed as sedimentation basins; delaying final asphalt application on road surfaces for a period of time to detect problems; delaying construction of turn lanes until traffic thresholds are reached; delaying sidewalk segments as individual houses are built; and delaying construction of infrastructure that requires coordination with other planned infrastructure.

2. Other Improvements

For other required improvements, if the responsible department director or designee determines the completion of the improvement prior to issuance of a certificate of compliance is not practicable, and sufficient justification for the delay has been shown, certificates of compliance may be issued if an adequate performance guarantee is provided. In such event, the responsible department director or designee shall determine the time period within which the improvement must be completed.

G. Expiration of Approval

The subdivider shall have 180 days after approval to file and record the final plat with the Office of the Register of Deeds before the approval becomes void.

3.6.9 Alternative Subdivision for Financing Purposes

For purposes of financing or refinancing development, it is sometimes necessary to subdivide a previously approved development complex (including but not limited to a shopping center, an office or industrial park, or a housing complex) originally located on a single parcel into two or more lots, where a subdivision would vary dimensional, parking, or landscaping requirements of this Ordinance. The Planning Director or designee is authorized to permit such subdivision to occur subject to the following criteria:

- A.** A valid, approved site plan exists for the overall complex;
- B.** The complex, in its entirety, satisfies all Ordinance requirements; and
- C.** Each final plat created contains a note stating that the owners acknowledge that the individual parcel is a part of the named development complex, and that deeds of easement, restrictive covenants, and/or other legal documents necessary for the perpetual functioning of the development complex shall be executed and recorded with the final plat.

Sec. 3.7 Site Plan Review

3.7.1 General

Site plan review, when applicable, shall verify that proposed development:

- A.** Complies with all applicable Ordinance requirements, including any applicable development plan;
- B.** Complies with all previously approved applicable plans, including open space and trails plans, and bicycle and pedestrian plans;
- C.** Provides for trash handling, recycling, grease bins, and other waste related facilities employed in the normal operation of the use;
- D.** Provides adequate locations of parking areas, and pedestrian and vehicular access points and circulation;
- E.** Provides adequate design of traffic patterns, traffic control measures, and street pavement areas, with provisions for maintaining traffic flows and reducing unfavorable effects of traffic on nearby properties;
- F.** Provides adequate stormwater facilities, water supply, sanitary sewer service, and fire protection, as evidenced by conformance with department standards, specifications, and guidelines;
- G.** Complies with requirements for easements and dedications;
- H.** Where a TIA has been submitted, accommodation for the traffic generated by the development with the existing or funded transportation system, or adequate traffic mitigation measures, are provided.

3.7.2 Applicability

All proposed development or changes of use, except as indicated below, shall be subject to the site plan review process. The following are exempt from site plan review:

- A.** Single-family and two-family development on existing single lots of record.
- B.** Development that does not require review by any City or County department for conformance with the standards of this Ordinance; or does not require a permit such as but not limited to fences or flagpoles. In instances where these types of development require a certificate of appropriateness (COA) or a special use permit, a site plan will not be required.
- C.** Change of use where no additions to buildings or structures, or exterior land improvements, are proposed and the change of use:
 - 1.** Does not require additional parking or stacking.
 - 2.** Does not require additional landscaping.
 - 3.** Does not require a Traffic Impact Analysis (TIA) or no improvements are required as a result of a TIA analysis.
 - 4.** Only requires Architectural Review per Section 3.23.
- D.** Development projects consisting only of improvements within the right-of-way, except for those located within a design district. In these instances, a separate site plan application can

be filed or site plan review can occur through another technical review by the city or county for that development project.

3.7.3 Types of Site Plans

A. Administrative Site Plans

The approving authority is the Planning Director or designee.

B. Major Site Plans

1. The approving authority is the Governing Body.
2. Criteria:
 - a. The request is for approval pursuant to a standard established in the Ordinance that requires Governing Body approval; or
 - b. Involves the requirement of a major or transportation special use permit; or
 - c. Is located in a Watershed Protection Overlay Critical Area (A), as defined in Sec. 4.11, Watershed Protection Overlay, with impervious surface that exceeds the maximum permitted by the Low Density Option under Sec. 8.7, Watershed Protection Overlay Standards.

C. Site Plan Amendments

1. The Planning Director, or designee, is authorized to approve minor changes to the approved site plan, resulting from field conditions or which result in an equivalent or better performance.
2. Significant changes to the approved site plan, such as but not limited to a change in access points, relocation of buildings or parking areas, relocation of stormwater facilities, and changes of use that require different development standards, shall be resubmitted for site plan approval as a new site plan application.
3. Changes to an approved, valid site plan required as a result of an update to the applicable Flood Insurance Rate Map(s) (FIRM) or other detailed flood data pursuant to paragraph 8.4.2, Applicability, shall be submitted as a site plan amendment.
4. A site plan amendment request shall clearly identify the elements for which approval is sought in both text and graphic form. Only those elements so identified shall be reviewed and considered for approval. If any element of an approved plan is changed but not identified, the amendment request shall be denied in its entirety or, if already approved, the amendment shall be deemed null and void in its entirety.
5. Site plan amendments to plans approved under the 1994 Merged Zoning Ordinance, as amended, shall follow approval procedures of this paragraph 3.7.3C.

3.7.4 Conformance to an Approved Development Plan

A site plan shall conform to an approved development plan except as required under paragraph 3.5.12D, Changes Required by Ordinance or Other Law, or as authorized under paragraph 3.5.12, Deviations from Approved Development Plans, and paragraph 3.5.6C, Authority of the Planning Director.

3.7.5 Site Plan Requirements

- A. A pre-application conference shall be required pursuant to paragraph 3.2.2, Pre-Application Conference.
- B. An application for site plan review shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
- C. Site plans shall demonstrate compliance with all applicable Ordinance requirements, including any variance obtained pursuant to Sec. 3.14, Variance, and any other applicable development requirements. Site plan documents shall contain the information required within the site plan checklists maintained by the Planning Department unless expressly exempted by another provision of this Ordinance, or unless the Planning Director or designee makes the determination that less detailed information is adequate for review.
- D. No processing or review of a site plan will proceed without the required information.
- E. Site plan applications shall utilize applicable forms maintained by the applicable City, County, or State department or agency.
- F. A site plan shall conform to an approved development plan except as required under paragraph 3.5.12D, Changes Required by Ordinance or Other Law, or as authorized under paragraph 3.5.12, Deviations from Approved Development Plans, and paragraph 3.5.6C, Authority of the Planning Director.
- G. All requirements imposed through a site plan shall run with the land and shall apply against any owner, subsequent owner, or occupant.

3.7.6 Submittal of Corrections

- A. Corrections or modifications for site plans shall be returned to the Planning Director or designee within 90 days from the date comments are officially issued or the site plan application shall be considered withdrawn.
- B. Corrections or modifications for site plans submitted to address a Notice of Violation shall be returned to the Planning Director or designee within 30 days from the date comments are officially issued or the site plan application shall be considered withdrawn.
- C. An extension period may be granted by the Planning Director or designee.

3.7.7 Final Approval

- A. Site plans can be considered for final approval only after all comments have been satisfied as determined by the applicable reviewing department or agency.
- B. Approved plans shall be stamped, signed, and dated by the approving authority or designee.

3.7.8 Issuance of Building Permits

After an approved copy of the site plan is received by the Inspections Director or designee, building permits may be issued for the project. No building permit may be issued until the required site plan is approved.

3.7.9 Inspections of Required Improvements

Inspections of site improvements shall be made by the entity responsible for such improvements as required to certify compliance with approved site plans. No improvements

shall be accepted for maintenance by the governing jurisdiction unless and until the requirements regarding public improvements have been met.

3.7.10 Issuance of Certificate of Compliance

Improvements specified in the approved plan shall be made prior to issuance of a certificate of compliance unless an extension of compliance has been prepared and approved in conformance with the requirements of this Ordinance.

3.7.11 Coordination with Major Special Use Permits

Applications for major special use permits may be submitted concurrently with a site plan. However, decisions shall be rendered with a separate motion.

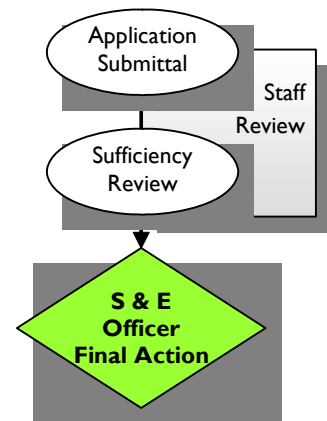
3.7.12 Continuing Validity of Site Plans

- A. An approved site plan shall retain its validity for four years, and shall remain valid if:
 - 1. A permit to begin development pursuant to the site plan, such as a land disturbance permit, a building permit, or an improvement permit, has been issued and has remained continuously valid thereafter; and,
 - 2. Building or land disturbing activity has begun on the property.
- B. The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the site plan for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.
- C. Requests for extensions of validity for site plans approved under the previous 1994 Merged Zoning Ordinance, as amended, shall comply with the review criteria specified within that ordinance. The approving authority, however, shall be the Planning Director or designee, utilizing the same findings specified in that Ordinance.
- D. Site plan amendments shall not extend the validity of the original, approved site plan.

Sec. 3.8 Sedimentation and Erosion Control

3.8.1 Applicability

- A. If required under Sec. 12.10, Sedimentation and Erosion Control, an approved sedimentation and erosion control plan and/or a land-disturbing permit shall be obtained before commencing land-disturbing activity.



- B. Pursuant to Sec. 113A-57(4) of the North Carolina Sedimentation Pollution Control Act of 1973, land-disturbing activity that requires a sedimentation and erosion control plan under Sec. 12.10, Sedimentation and Erosion Control, shall not commence until at least 30 days after a sedimentation and erosion control plan is filed with the County Sedimentation and Erosion Control Office, regardless of when the plan is approved.

3.8.2 Application Requirements

A. Erosion and Sedimentation Control Plan

1. Three copies of a sedimentation and erosion control plan shall be filed with the County Sedimentation and Erosion Control Office.
2. A sedimentation and erosion control plan shall contain site drawings, vicinity maps, assumptions, calculations, narrative statements, and a construction sequence as needed to adequately describe the proposed development and the measures proposed to comply with the requirements of this Article.
3. A sedimentation and erosion control plan shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, registered architect, registered land surveyor, or certified professional sediment and erosion control specialist. The County Sedimentation and Erosion Control Officer or designee may, however, deem such a seal and signature not necessary due to site simplicity (as the absence of sensitive geographical features and receiving watercourses) and the limited nature of the sedimentation and erosion control measures required.
4. The approval of sedimentation and erosion control plan is conditioned on the applicant's compliance with federal, state and local water quality laws, regulations, and rules.
5. An approved sedimentation and erosion control plan shall be kept on file at the job site.

B. Land-Disturbing Permit

1. A land-disturbing permit may be obtained by submitting the following:
 - a. Applicable fee;

- b. Zoning compliance checkoff issued by the Durham City-County Planning Department;
 - c. Completed Durham County Financial Responsibility/Ownership Form With Landowner Consent Form (FRO);
 - d. Approved sedimentation and erosion control plan, if required;
 - e. Improvement security, if required;
 - f. Certification that tree protection fencing has been installed, if required; and
 - g. Approval of the proposed project by the City or County as applicable.
2. No permit shall be issued until such time as the Sedimentation and Erosion Control Officer or designee is assured that the proposed land-disturbing activity will be carried out in accordance with this section and Sec. 12.10, Sedimentation and Erosion Control, and the approved sedimentation and erosion control plan, if required. A land-disturbing permit application may be disapproved for the same reasons that a sedimentation and erosion control plan may be disapproved, as set forth in paragraph 3.8.7, Disapproval of Plan, of this Ordinance.
3. The Sedimentation and Erosion Control Officer or designee shall require security to assure performance of the conditions of the permit whenever a land-disturbing activity is in excess of five acres or whenever the Officer or designee determines that the activity may result in significant off-site damage. The applicant shall file with the Officer or designee an improvement security in the form of a performance or cash bond or letter of credit. The amount shall be that which the Officer or designee deems sufficient to cover all costs of protection or other improvements required for conformity with standards specified in this section and Sec. 12.10, Sedimentation and Erosion Control. The security may be adjusted or released as the amount of disturbed area changes. The security shall be released when the Officer or designee has certified that all of the requirements of such sections have been met. Forfeiture of the improvement security shall not release the person conducting the land disturbing activity of their obligation to install and maintain necessary erosion control measures, to stabilize the site, or any other obligation of this section or Sec. 12.10, Sedimentation and Erosion Control, or any rule or order promulgated in furtherance thereof.
4. Prior to initiating land-disturbing activity, the permittee shall notify the Sedimentation and Erosion Control Office of the date that such activity will begin.
5. A land-disturbing permit issued shall be prominently displayed at the job site until all construction is completed, all permanent sedimentation and erosion control measures are removed, and the site has been stabilized as required.

3.8.3 Fees

The fees charged for the administration and enforcement of this Article shall be as prescribed by the Board of Commissioners.

3.8.4 Action by Sedimentation and Erosion Control Office

- A. The County Sedimentation and Erosion Control Office shall forward a copy of each complete sedimentation and erosion control plan to the Durham Soil and Water Conservation District for review and comment.
- B. The County Sedimentation and Erosion Control Officer or designee shall review each complete sedimentation and erosion control plan submitted and within 30 days of receipt shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within 30 days of receipt shall be deemed approval. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval.
- C. If, following commencement of a land-disturbing activity pursuant to an approved sedimentation and erosion control plan, the County Sedimentation and Erosion Control Officer or designee determines that the plan is inadequate to meet the requirements of this section or Sec. 12.10, Sedimentation and Erosion Control, the Officer or designee may require such revisions as it deems necessary to comply with such sections. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Pending approval of a revised plan, work shall cease or shall continue only as authorized by the Officer or designee.
- D. The County Sedimentation and Erosion Control Officer or designee shall review each permit application that does not require an approved sedimentation and erosion control plan and within 14 calendar days of receipt shall notify the person submitting the application that it has been issued or denied.

3.8.5 Action by Durham Soil and Water Conservation District

The Durham Soil and Water Conservation District shall review a sedimentation and erosion control plan and submit any comments and recommendations to the County Sedimentation and Erosion Control Office within 20 days of receipt, or within any shorter period of time as may be agreed upon by the District and the Office. Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.

3.8.6 Preconstruction Conference

When deemed necessary by the Sedimentation and Erosion Control Officer, or designee, a preconstruction conference may be required.

3.8.7 Disapproval of Plan

- A. An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:
 - 1. Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the North Carolina Sedimentation Control Commission or a local government pursuant to the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act) or local ordinance adopted pursuant to the Act, and has not complied with the notice within the time specified in the notice;

2. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;
 3. Has been convicted of a misdemeanor pursuant to NCGS § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 4. Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.
- B. For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.
- C. Any person engaged in land-disturbing activity who fails to file a plan in accordance with this Article, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this Article.

3.8.8 Amendment of Plan

Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as described in this section for a new application. Until such time as such amendment is approved by the Sedimentation and Erosion Control Officer or designee, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

3.8.9 Appeals

- A. Except as provided in paragraph B. of this subsection, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:
1. The disapproval or modification of any proposed erosion control plan or the refusal to issue a land-disturbing permit by the Sedimentation and Erosion Control Officer or designee shall entitle the person submitting the plan, or applying for the permit, to a hearing if such person submits written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of written notice of disapproval or modifications. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued;
 2. Hearings held pursuant to this section shall be conducted by the Board of Commissioners within 15 days after the date of the appeal or request for a hearing, or at the next regularly scheduled meeting, whichever is later; and
 3. If the Board of Commissioners upholds the disapproval or modification of a proposed erosion control plan or refusal to issue a permit following the public hearing, the person submitting the plan or permit application shall then be entitled to appeal the Board of Commissioners' decision to the State Sedimentation Control Commission as provided in NCGS § 113A-61(c) and Title 15 NCAC 4B.0018(d).

B. Appeals

In the event that an erosion control plan is disapproved pursuant to paragraph 3.8.7, Disapproval of Plan, the County Sedimentation and Erosion Control Office shall notify the Director of the Division of Energy, Mineral, and Land Resources (within the North Carolina Department of Environmental Quality [DEQ]) of such disapproval within ten days. The Office shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Office's disapproval of the plan pursuant to

paragraph 3.8.7, Disapproval of Plan, directly to the State Sedimentation Control Commission.

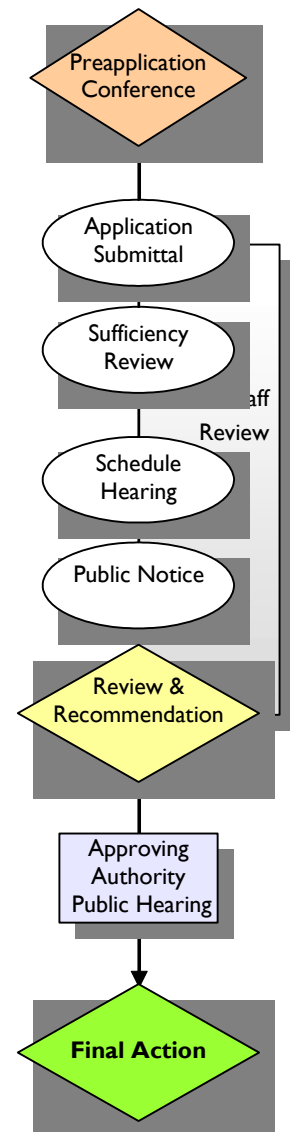
3.8.10 Expiration

- A.** A land-disturbing permit shall expire at the end of:
 - 1.** One year from the date of issuance if no land-disturbing activity has been undertaken in that period. No land-disturbing activity may take place following expiration until the person responsible has applied for, and received, a new land-disturbing permit. The fee for the new permit shall be 100% of the current applicable fee; or
 - 2.** A two-year period, unless it is extended by the Sedimentation and Erosion Control Officer or designee upon written request of the permit holder. The request for extension shall include reasons for incompleteness of the work. After review of the original plan and an on-site inspection of the completed work, the permit may be extended effective for a period not to exceed six months from the date of expiration of the original permit. The fee for the extended permit shall be 25% of the current applicable fee. If work cannot be completed and the site permanently stabilized prior to expiration of the permit extension, then a new land-disturbing permit must be applied for and obtained as described in this section.
- B.** An approved sedimentation and erosion control plan for which no permit has been issued shall expire one year from the approval date. If a plan has been disapproved, a revised plan must be submitted within one year from the disapproval date or the file will be closed.

Sec. 3.9 Special Use Permit

3.9.1 Applicability

- A. Special uses within the zoning districts are considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with surrounding uses require individual review.
- B. A minor special use permit shall be required for all minor special uses as set forth in the use table in Sec. 5.1, Use Table, and as may be specified elsewhere in this Ordinance. Minor special use permits require approval by the Board of Adjustment, except pursuant to paragraph 3.9.1F, below.
- C. A design special use permit shall be required for development projects with corresponding site plans and architectural reviews where alternative forms of compliance are sought under Sec. 6.12, Design Districts. Design special use permits require approval by the Board of Adjustment, except pursuant to paragraph 3.9.1F, below.
- D. A major special use permit shall be required for all major special uses as set forth in the use table in Sec. 5.1, Use Table; for spray irrigation in a conservation subdivision pursuant to paragraph 6.2.4, Conservation Subdivision; and as specified elsewhere in this Ordinance. Major special use permits require approval by the appropriate governing body.
- E. A transportation special use permit shall be required for development projects with corresponding site plans and preliminary plats pursuant to paragraph 3.9.10, Transportation Special Use Permit. Transportation special use permits require approval by the appropriate governing body.
- F. Projects that require not only a major and/or transportation special use permit, but also a minor and/or design special use permit may have the use permits consolidated into a single hearing before the appropriate governing body so long as all required findings for each special use permit are made. Separate orders for each special use permit shall be issued.



3.9.2 Pre-Application Conference

All applicants applying for a special use permit shall schedule a pre-application conference in accordance with paragraph 3.2.2, Pre-Application Conference.

3.9.3 Application Requirements

All applications for special use permits shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.9.4 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give public notice as set forth in paragraph 3.2.5, Notice and Public Hearings.

3.9.5 Action by the Planning Director

The Planning Director or designee shall prepare a report that reviews the special use permit in light of any requirements of this Ordinance. A copy shall be provided to the Board of Adjustment or the governing body, as appropriate, and the applicant.

3.9.6 Approval of a Minor or Design Special Use Permit

- A. Prior to scheduling the public hearing on the minor or design special use permit, the corresponding site plan or architectural review application, as applicable, shall be ready for action by the approving authority.
- B. The applicant seeking the special use permit shall have the burden of presenting evidence sufficient to allow the approving authority to reach the conclusions set forth below, as well as the burden of persuasion on those issues.
- C. After conducting the public hearing and hearing the recommendations of the Planning Director or designee, the Board of Adjustment shall:
 - 1. Approve the request;
 - 2. Approve the request with conditions.
 - 3. Deny the request; or
 - 4. Continue the hearing.
- D. Conditions may be incorporated as part of the approval of the special use permit to assure that adequate mitigation measures are associated with the use or design. The conditions shall become a part of the minor or design special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

3.9.7 Approval of a Major or Transportation Special Use Permit

- A. Prior to scheduling the public hearing on the major or transportation special use permit, the corresponding site plan shall be ready for action by the approving authority.
- B. After conducting the public hearing and hearing the recommendations of the Planning Director, Transportation Director, or their designee as appropriate, the governing body shall:
 - 1. Approve the request;
 - 2. Approve the request with conditions.
 - 3. Deny the request; or
 - 4. Continue the hearing.
- C. The governing body may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a

part of the major special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

3.9.8 Criteria for Approval of Major or Minor Special Use Permits

A. General Findings

Unless otherwise specified in this Ordinance, applications for major or minor special use permits shall be approved only if the approving authority finds that the use as proposed, or the use as proposed with conditions, is:

1. In harmony with the area and not substantially injurious to the value of properties in the general vicinity;
2. In conformance with all special requirements applicable to the use;
3. Will not adversely affect the health or safety of the public; and
4. Will adequately address the review factors identified below.

B. Review Factors

The applicant shall demonstrate that the review factors listed below have been adequately addressed. If an application is denied, the approving authority shall specify which of these review factors, if any, were not adequately addressed.

1. Circulation

Number and location of access points to the property and the proposed structures and uses, with particular reference to automotive, bicycle, mass transit and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

2. Parking and Loading

Location of off-street parking and loading areas.

3. Service Entrances and Areas

Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.

4. Lighting

Locations of exterior lighting with reference to glare, traffic safety, economic effect and compatibility with other property in the area.

5. Signs

Appropriateness of signs considering location, color, height, size, and design within the context of other property in the area.

6. Utilities

Location and availability of utilities.

7. Open Spaces

Location of required yards and other open spaces and preservation of existing trees and other natural features.

8. Environmental Protection

Preservation of tree cover, Durham Inventory Sites, floodplain, stream buffers, wetlands, steep slopes, open space and other natural features, and protection of water quality.

9. Screening, Buffering and Landscaping

Installation of screening, buffering, fencing and landscaping where necessary to protect adjacent property.

10. Effect on Nearby Properties

Effects of the proposed use on nearby properties, including, but not limited to, the effects of noise, odor, lighting, and traffic.

11. Compatibility

The level of general compatibility with nearby properties and impacted neighborhoods, including but not limited to the appropriateness of the scale, design, and use in relationship to other properties.

12. Consistency with Policy

Consistency with the Comprehensive Plan and applicable development tier guidelines, overlay purposes, and zoning district intent statements in Article 4, Zoning Districts.

13. Other Factors

Any other review factors which the approving authority considers to be appropriate to the property in question.

C. Additional Review Factors for Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas

The applicant for a minor special use permit under this section shall demonstrate that the additional review factors listed below have been adequately addressed. If the application is denied, the Board of Adjustment shall specify which of these review factors, if any, were not adequately addressed.

1. Susceptibility of the proposed facility, structure, or other development and its contents to flood damage and the effect of such damage on the individual property owner and others as a result of flood damage;
2. Importance of the services provided by the proposed facility, structure, or other development to the community;
3. Necessity to the facility, structure, or other development of a waterfront location, where applicable;
4. Compatibility of the proposed use with existing and anticipated development;
5. Safety of access to the property in times of flood for ordinary and emergency vehicles;
6. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
7. Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges;

8. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The proposed fill or development provides for a better balance between overall efficiency of the site design and improved conservation elsewhere on the site than would be possible without intrusion into the floodway fringe, nonencroachment area fringe, or Areas of Shallow Flooding (Zone AO);
10. The proposed fill or development represents the minimum amount of floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) intrusion to achieve this better balance; and
11. Any other relevant factors, technical evaluations, or standards specified in other sections of this Ordinance.

3.9.9 Criteria for Approval of Design Special Use Permits

Applications for a design special use permit shall be approved only if the approving authority finds that the alternative design as proposed, or the design as proposed with conditions, shall yield an equal or better performance as compared to standard Ordinance requirements based upon the following design factors, as applicable:

- A. Street level activity is generated with pedestrian oriented design on all street frontages;
- B. The design complements the surrounding context;
- C. The design relates to the human scale in site and building design;
- D. The design incorporates sustainable design strategies that equal or exceed current requirements;
- E. The design protects and emphasizes important views of notable buildings and sites; and
- F. Access and circulation systems allow a wide range of efficient multi-modal movement options.

3.9.10 Transportation Special Use Permit

A. Requirements

A transportation special use permit shall be required for development projects that are expected to generate:

1. 600 or more vehicle trips at peak hour; or
2. 300 or more vehicle trips at peak hour, if any road serving the project is operating at a level of service lower than the jurisdiction's adopted level of service.

B. Exemptions

The following projects shall be exempt from the requirement of a transportation special use permit, even if they meet or exceed the thresholds specified above.

1. Projects that do not require a TIA per Sec. 3.3, Traffic Impact Analysis (TIA).
2. Projects within the UC, UC-2, or SRP zoning districts.
3. Projects within the Downtown Tier.

4. Projects which have submitted a TIA in connection with a zoning map change with a development plan, and which are developing consistent with the approved development plan, if the TIA is valid pursuant to paragraph 3.3.6, Period of Validity.
5. (County Only) Projects within the SRP-C District.

C. Criteria for Approval

Applications for a transportation special use permit shall be approved only if the governing body makes the following findings:

1. The traffic generated by the development and associated improvements to the street system will not have a significant adverse impact on the surrounding area. Significant adverse impact shall include:
 - a. Substantial increases in traffic on local residential streets such that the majority of the traffic is not associated with the residential properties which front on the street; or
 - b. The need to widen local residential streets, which would detract significantly from the character or basic function of the nearby streets.
2. Adequate provisions have been made for safe and efficient vehicular circulation, parking and loading, and pedestrian access.
3. The traffic generated by the proposed development and any proposed improvements to the street system will not have a significant adverse impact on the environment. Significant adverse impacts shall include but not be limited to undue concentration of air pollutants, or excessive noise or vibrations.
4. The traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed as part of the development application. Proposed mitigation measures shall become conditions of the special use permit. The adopted level of service for the adjacent roadways may be considered in making this determination but shall not be the sole factor considered by the governing body.

3.9.11 Coordination with Variances

Applications for variances may be submitted concurrently with requests for special use permits. However, decisions shall be rendered separately for any variance and the special use permit(s).

3.9.12 Coordination with Zoning Map Change Applications

An application for a special use permit may be reviewed concurrently with a zoning map change application. However, decisions shall be rendered with separate motions.

3.9.13 Resubmittals

An application for a special use permit which has been denied may be resubmitted if there has been a change in circumstances, as determined by the Planning Director or designee.

3.9.14 Amendments

Alterations or revisions to approved special uses may be approved by the Planning Director or designee if the special use still meets the intent of the standards established with the

original approval. Significant modifications to approved special uses, as determined by the Planning Director or designee, shall require submittal of a new application.

3.9.15 Expiration

A special use permit shall become null and void in any of the following cases:

- A.** If a site plan or architectural review, as applicable, is not approved within 12 months of the date of permit approval.
- B.** If an approved site plan, architectural review application, or building permit expires.
- C.** If a building permit is not issued within two years of the date of approval, in cases where a corresponding site plan or architectural review is not required.
- D.** If a substantial violation of the conditions of the permit, as determined by the Planning Director or designee occurs. The addition of language to the special use permit regarding such voiding shall not be required.

3.9.16 Appeal

Appeal from final action can be taken by filing a petition for *certiorari* with the Durham County Superior Court.

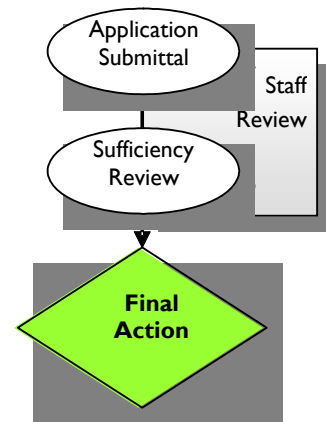
Sec. 3.10 Sign Permit

3.10.1 Applicability

- A. Certain signs shall be allowed without sign permits (as set forth in Article 11, Signs). Signs requiring permits shall be allowed in accordance with the following procedures.

Commentary: A common signage plan may be required before a sign permit can be issued (see Sec. 3.11, Common and Way-Finding Signage Plans).

- B. Internally oriented signs not legible from the public right-of-way shall not require a sign permit; however, electrical or other permits may be required.



3.10.2 Application Requirements

- A. Except as provided in Article 11, Signs, no sign may be erected, moved, enlarged, or altered except in accordance with this Ordinance and pursuant to the issuance of a sign permit.
- B. A sign permit application shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.10.3 Action by the Planning Director

Upon review of the application, the Planning Director or designee shall approve the sign permit provided the sign meets all requirements of this Ordinance, and all other applicable electrical and North Carolina Building Code requirements.

3.10.4 Inspection of Permanent Signs

- A. The applicant shall request an inspection after installation of the signs.
- B. If the signs are found to be in compliance, the applicant shall receive a permanent seal which identifies the sign. The applicant shall attach the identification in a conspicuous location which is accessible to the Planning Director or designee. It is recommended that businesses place the permit in a lower corner of the front door of the business in those cases where the seal is not affixed to the sign.
- C. The sign permit shall be null and void if sign installation is not completed within six months or the signs are not in conformance with the approved application.
- D. Valid sign permits may be assigned to a successor as holder of a business license for the same premises.

3.10.5 Temporary Sign Permits

A temporary sign permit shall be issued in accordance with Article 11, Signs. A common signage plan pursuant to Sec. 3.11, Common and Way-Finding Signage Plans, shall not be required for applications for temporary sign permits.

3.10.6 Revocation of a Sign Permit

The sign permit shall be revoked if a sign is found to be in violation of the requirements of this Ordinance, or other applicable electrical and North Carolina State Building Code requirements.

3.10.7 Appeal

Final action on a sign permit can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.11 Common and Way-Finding Signage Plans

3.11.1 General

- A.** A common signage plan is required for all signs for one or more buildings or businesses within a unified development complex, as demonstrated through a development plan or approved site plan(s), even if the property is subdivided and has various owners.
 - 1.** Approval of a common signage plan is required prior to the issuance of a sign permit.
 - 2.** Internally-oriented signs not visible from the public right-of-way shall not be required to be included in a common signage plan.
 - 3.** Applications for temporary sign permits shall not be required to submit an approved common signage plan.
 - 4.** Common signage plans are not required in UC, UC-2, and Design districts and in a local Historic Districts Overlay. (County Only) Common signage plans are not required in the SRP-C District.
- B.** A way-finding signage plan is required to allow signs pursuant to paragraph 11.6.2A.8, Way-Finding Signs.
 - 1.** Approval of a way-finding signage plan is required prior to the issuance of a sign permit.
 - 2.** A way-finding signage plan can be approved separately, or as part of, a common signage plan.
 - 3.** Internally-oriented signs not visible from the public right-of-way shall not be required to be included in a way-finding signage plan.
 - 4.** (County Only) Way-finding signage plans are not required in the SRP-C District.

3.11.2 Application Requirements

- A.** The elements of common and way-finding signage plans shall be in accordance with Sec. 11.8, Elements of Common and Way-Finding Signage Plans.
- B.** Common and way-finding signage plan applications shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
- C.** Additional requirements are listed in Sec. 11.7, Landmark Signs.

3.11.3 Action by the Planning Director

- A.** The Planning Director, or designee, is the approving authority for common and way-finding signage plans.
- B.** The Planning Director, or designee, may allow modifications to the lettering style of a common signage plan to accommodate state and federally registered trademarks (logos) if the Planning Director, or designee, determines that the intent of the common signage plan requirements shall be maintained. In allowing the modifications, the Planning Director, or designee, may limit the logo size.
- C.** Minor alterations in sign locations resulting from unexpected conditions on the site may be approved by the Planning Director, or designee.

3.11.4 Revisions and Amendments

- A.** Revisions or amendments to a common signage plan shall require documentation of notification to all owners and tenants on the property prior to approval. The notification shall indicate the proposed changes and shall be mailed between 10 to 25 days prior to application submittal.
- B.** Signs erected after September 1, 1989, and subsequently made nonconforming because of an amendment to a common signage plan shall be brought into compliance with the amended plan within six months of approval of the amended plan.

3.11.5 Appeal

Final action on a common or way-finding signage plan can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.12 Temporary Use Permit

Commentary: Temporary outdoor uses should not be confused with permanent outdoor activities (for example, a car sales lot) that are only allowed in certain districts and require site plan approval, nor should they be confused with an outdoor display area (for example, a garden center that is part of a building supply store) that may be a part of a retail store and require site plan approval.

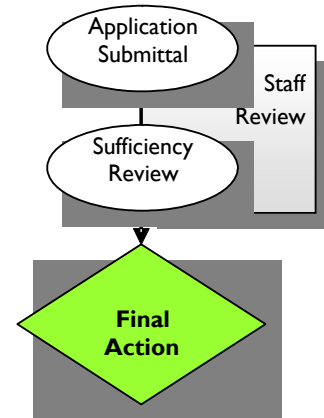
3.12.1 Applicability

- A. Temporary uses occurring on property outside of the public right-of-way shall be allowed upon the issuance of a temporary use permit, except as set forth in, Sec. 5.5, Temporary Uses.

Commentary: Standards for specific uses are included in Sec. 5.5, Temporary Uses.

- B. The provisions of this section shall not apply to temporary uses occurring within the public right-of-way.

Commentary: For further details on temporary uses occurring within the public right-of-way see the applicable City or County Code.



3.12.2 Application Requirements

A temporary use permit application shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.12.3 Action by the Planning Director

- A. After receiving the application, the Planning Director or designee shall have up to 30 days to review the application.
- B. Upon hearing recommendations from all appropriate departments, the Planning Director or designee shall approve the issuance of a temporary use permit subject to the following:
1. No lighting or electrical service shall be provided without an electrical permit;
 2. No temporary use structure shall be erected without a building permit;
 3. No temporary use structure shall block fire lanes or pedestrian or vehicular access;
 4. The site of the temporary use shall be cleared of all debris at the end of the temporary use. All temporary structures shall be cleared from the site within five days after the use is terminated;
 5. Written permission of the property owner for the temporary use shall be provided;
 6. Adequate parking shall be provided, considering both the required parking for other uses and the parking for the proposed temporary use;
 7. Adequate traffic control measures shall be provided;
 8. Required landscaped and vegetated areas remain undisturbed;

- 9. Adequate provisions for trash disposal and sanitary facilities shall be provided; and
 - 10. When appropriate, adequate provisions for crowd control shall be provided.
- C. Temporary use permits may be renewed one time by the Planning Director or designee, unless other renewal standards are specified in Sec. 5.5, Temporary Uses, or in other provisions of this section.

3.12.4 Revocation of a Temporary Use Permit

A temporary use permit shall be revoked if the Planning Director or designee finds that the terms of the permit have been violated or that there is a hazard to the public health, safety and welfare.

3.12.5 Appeal

Final action on a temporary use permit can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.13 Home Occupation Permit

3.13.1 Applicability

A home occupation (see paragraph 5.4.4) shall require a permit, as set forth below.

3.13.2 Application Requirements

A home occupation application shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.13.3 Action by the Planning Director

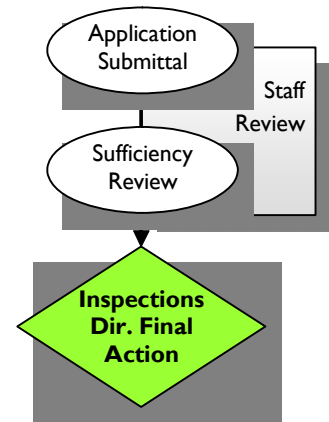
Upon review of the application, the Planning Director, or designee, shall approve the home occupation permit, provided the home occupation meets all requirements of this Ordinance.

3.13.4 Revocation

The home occupation permit shall be revoked if the home occupation is found to be in violation of the requirements of this Ordinance.

3.13.5 Appeal

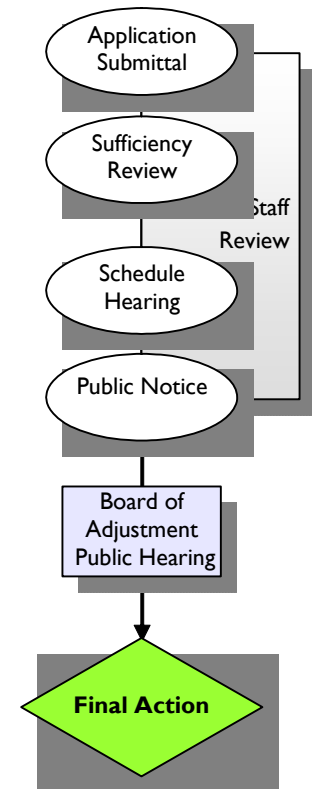
Final action on a home occupation permit can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.



Sec. 3.14 Variance

3.14.1 Applicability

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where unnecessary hardships would result from carrying out the strict letter of the Ordinance.
- B. Despite the above and pursuant to 15A NCAC 02B .0233 and 15A NCAC 02B .0267, a “major variance” from the requirements of Sec. 8.5, Riparian Buffer Protection Standards, including where incorporated by reference, shall be granted only by the North Carolina Environmental Management Commission. A “minor variance” may be granted by the approval authority in accordance with paragraph 8.5.13, Variances.
- C. No variance shall be granted that would have the effect of allowing a use not permitted in the use table in Sec. 5.1, Use Table, or by Sec. 8.4, Floodplain and Flood Damage Protection Standards.



Commentary: Variances may be granted for, among other things, height, structure size, lot dimensions, and setbacks.

3.14.2 Pre-Application Conference

All applicants seeking a variance shall schedule a pre-application conference with the Planning Director or designee to discuss the procedures, standards, and regulations required for variance approval in accordance to the provisions of this Ordinance.

3.14.3 Application Requirements

An application for a variance shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

3.14.4 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give public notice as forth in paragraph 3.2.5, Notice and Public Hearings.

3.14.5 Burden of Proof

The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below, as well as the burden of persuasion on those issues.

3.14.6 Action by the Planning Director

The Planning Director, or designee, shall provide the Board of Adjustment with a copy of the application and all relevant materials pertaining to the request prior to the public hearing.

3.14.7 Action by the Board of Adjustment

- A.** Each decision shall be accompanied by a finding of fact by the Board of Adjustment which specifies the reasons for the decision.
- B.** The Board of Adjustment may approve the request, deny the request, or continue the request. In approving the variance, the Board of Adjustment may prescribe reasonable and appropriate conditions provided that the conditions are reasonably related to the variance.

3.14.8 Findings

In granting any variance, the Board of Adjustment shall make the following findings:

- A.** Unnecessary hardship would result from the strict application of the Ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- B.** The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- C.** The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting a variance shall not be regarded as a self-created hardship.
- D.** The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.

3.14.9 Watershed Protection

- A.** A request for a variance from any requirement of Sec. 8.7, Watershed Protection Overlay Standards, that violates any provision in Title 15 NCAC 2B, Sections .0100, .0200, and .0300, as amended, shall be first heard by the Board of Adjustment in accordance with this section and after notification of the appropriate governing body, except that a request for a variance from the requirements of Sec. 8.5, Riparian Buffer Protection Standards, as referenced by paragraph 8.7.2E, Riparian Buffers, shall proceed under paragraph 8.5.13, Variances. A recommendation from the Board of Adjustment for a variance shall constitute a request by the local government for a variance from the North Carolina Environmental Management Commission. Such variances shall be considered “major variances” in accordance with Title 15A NCAC .0104(r).
- B.** For all variance requests from Sec. 8.7, Watershed Protection Overlay Standards, except those from Sec. 8.5, Riparian Buffer Protection Standards, as referenced therein, the local government with jurisdiction shall notify and allow reasonable comment period for all local

governments having jurisdiction within the watershed area of the water supply source and the entity using the water supply for consumption.

- C. The Planning Director, or designee, shall keep a record of variances to Sec. 8.7, Watershed Protection Overlay Standards. This record of variances, not including those from Sec. 8.5, Riparian Buffer Protection Standards, as referenced in Sec. 8.7, shall be submitted to the Division of Water Resources, North Carolina Department of Environmental Quality by January 1st of each year. The record shall provide a description of each project receiving a variance and the reasons for granting a variance. The record of variances from Sec. 8.5 shall be included in the annual report to the North Carolina Division of Water Resources summarizing activities implementing the requirements of that section.

3.14.10 Expiration

A variance shall become null and void in any of the following cases:

- A. If a site plan, preliminary plat, or architectural review is not approved within 12 months of the date of approval of the variance.
- B. If an approved site plan, preliminary plat, architectural review, or building permit expires.
- C. In cases when a site plan, preliminary plat, or architectural review is not required:
 - 1. If a building permit is not issued within two years of the date of approval.
 - 2. If the Ordinance standard subject to the variance has been amended prior to the issuance of a building permit.
- D. If a substantial violation of the conditions of the variance approval is determined by the Planning Director or designee.

3.14.11 Appeal

Appeal from final action by the Board of Adjustment on a variance can be taken by filing a petition for *certiorari* with the Durham County Superior Court.

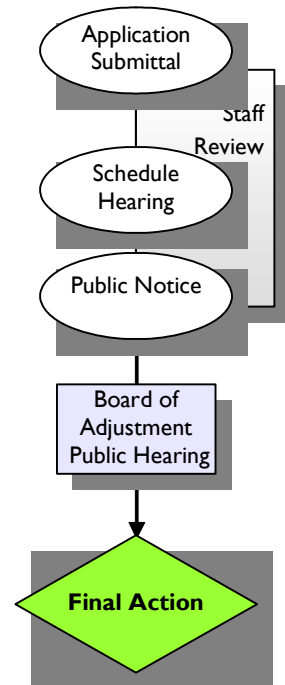
Sec. 3.15 Appeal of Administrative Decision

3.15.1 Applicability

An appeal by any person aggrieved by a final order, interpretation, or decision of any administrative official authorized to make decisions in regard to the provisions of this Ordinance may be taken to the Board of Adjustment, except as otherwise provided in this Ordinance.

3.15.2 Application Requirements

- A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the City or County Clerk, as applicable.
- B. An application for an appeal of an administrative decision shall be filed in accordance with the applicable provisions of paragraph 3.2.4, Application Requirements.
- C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the City or County Clerk, as applicable. The date and time of filing shall be entered on the notice.



3.15.3 Submission of Application

- A. A person or party with standing shall have 30 days from receipt of the written decision to file an appeal, or 30 days from receipt from any source of actual or constructive notice of the decision, pursuant to NCGS § 160A-388(b1) or NCGS § 153A-345.1, as applicable.
- B. The official who made the decision shall provide it in writing to the owner of the property that is the subject of the decision and to the party who sought the decision, if different than the owner. The written decision shall be delivered by personal delivery, electronic mail, or by first class mail.

3.15.4 Notice and Public Hearings

Once the application has been submitted, the Planning Director or designee shall schedule a public hearing at the first available Board of Adjustment meeting and give public notice pursuant to paragraph 3.2.5, Notice and Public Hearings.

3.15.5 Action by the Planning Director

- A. The Planning Director or designee shall transmit to the Board of Adjustment all the documents and exhibits constituting the record upon which the action appealed from is taken.
- B. The Planning Director or designee shall provide a copy of the record to the appellant and to the owner of the property that is subject to the appeal, if different than the appellant.

3.15.6 Action by Board of Adjustment

- A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought

to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken.

- B. When hearing an appeal pursuant to a quasi-judicial decision of the Historic Preservation Commission or any other appeal in the nature of *certiorari*, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS § 160A-393(k).

3.15.7 Effect of Appeal

- A. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property; or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court.
- B. If enforcement proceedings are not stayed, the appellant may file a request for an expedited hearing of the appeal, and the Board of adjustment shall meet to hear the appeal within 15 days after such a request is filed.
- C. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issue being appealed.

3.15.8 Appeal

Appeal from the Board of Adjustment action can be taken by filing a petition in the nature of *certiorari* with the Durham County Superior Court.

Sec. 3.16 Historic District or Landmark Designation

3.16.1 Applicability

- A. The City Council and the Board of Commissioners, as applicable, may designate an area as an historic district or a property as an historic landmark, or amend or remove a local historic district designation or landmark designation.
- B. A property owner or owners may request an area to be designated as an historic district or that a property be designated as an historic landmark, or to amend or remove a local historic district designation or landmark designation.

3.16.2 Designation of an Historic District

A. Application Process

1. General

Petitions to initiate the establishment of a local historic district are granted or denied by the applicable governing body, depending upon jurisdiction. Petitions shall first be considered by the Historic preservation Commission (HPC), which shall make a recommendation to the governing body as to whether the governing body should or should not initiate the request. If the governing body initiates the request, staff will proceed as directed with the designation of a local historic district zoning overlay (-H), including development of the required Historic District Preservation Plan.

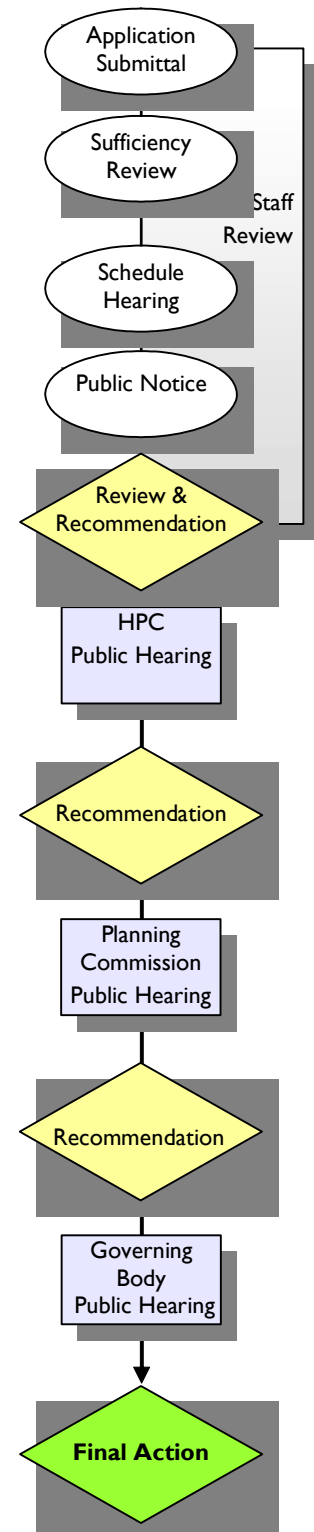
Commentary: As noted below, the HPC must consider findings before sending the request to the governing body. The governing body will consider information provided by the applicant, the HPC, and staff. Information provided by the applicant will include a percent of property owner support for the designation, which may factor in the governing body's decision to initiate the establishment of the proposed historic district designation.

2. Submittal

- a. Requests to establish a local historic district shall be submitted to the Planning Department, which shall in turn send the request to the HPC for its recommendation to the governing body.
- b. The Planning Department shall give notice in accordance with paragraph 3.2.5, Notice and Public Hearings, that a request has been filed and shall be considered by the HPC at a specified date and time.

3. HPC Recommendation

The HPC shall conduct a preliminary consideration of the



request and, at this time, shall make a recommendation to the governing body based upon the following findings:

- a. That the area is of special significance in terms of its prehistorical, historical, architectural or cultural importance; and
- b. That the area possesses integrity of design, setting, materials, feeling and association.

4. Governing Body Action

Upon reviewing information provided by the applicant and staff, and the findings and recommendation from the HPC, the governing body shall determine whether to initiate a formal designation process of the proposed local historic district, including development of the Historic District Preservation Plan. If the governing body determines a local historic district designation process shall proceed, it shall also determine when staff and the HPC should begin work based upon departmental staffing and work program priorities.

5. If the HPC finds that the proposed historic district meets the requirements of paragraph 3.16.1B above, then the Planning Director, or designee, shall prepare a Historic District Preservation Plan, in accordance with paragraph 3.16.3B below.
6. Upon the completion of the Historic Preservation Plan, the Planning Director, or designee, shall give notice in accordance with paragraph 3.2.5, Notice and Public Hearings, that the designation of an historic district and the adoption of a Historic District Preservation Plan shall be considered by the HPC at a specified date and time.

B. Historic District Preservation Plan

1. An Historic District Preservation Plan shall include an investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in the proposed historic district and a description of the boundaries of the proposed historic district, in accordance with NCGS §160A-400.4(1); principles and design review criteria (guidelines) for certificates of appropriateness as required in NCGS §160-400.9(c); and a preservation strategy tailored to the individual needs of the specific area.

2. Historic Properties Local Review Criteria

The Historic Properties Local Review Criteria, as amended, shall be the adopted principles and design review criteria applicable to all local historic districts, and shall be specifically referenced within the Historic District Preservation Plan.

C. Action by the NC Department of Natural and Cultural Resources

In accordance with NCGS §160A-400.4(2), the NC Department of Natural and Cultural Resources shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan. Failure of the NC Department of Natural and Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the

governing body may at any time thereafter take action on the proposed historic district and Historic District Preservation Plan.

D. Action by the Historic Preservation Commission

1. The HPC shall conduct a public hearing and give notice in accordance with paragraph 3.2.5, Notice and Public Hearings, on the proposed historic district designation and the Historic District Preservation Plan, prior to making a recommendation for approval or denial to the appropriate governing body.
2. The HPC shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend to the appropriate governing body denial of the request or designation of the area.
3. The HPC shall forward its recommendation on historic district designation to the Planning Commission and to the governing body with a recommended Historic District Preservation Plan. Consideration of the Historic District Preservation Plan shall be part of the consideration of the historic district designation.

E. Action by the Planning Commission

1. The Planning Commission shall conduct a public hearing and give notice in accordance with paragraph 3.2.5, Notice and Public Hearings, on the proposed historic district designation and the Historic District Preservation Plan.
2. The Planning Commission shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend denial or designation of the area.

F. Action by the Governing Body

1. The governing body shall set a public hearing and shall notify property owners within the proposed historic district of the public hearing in accordance with the public hearing and notification provisions of paragraph 3.2.5, Notice and Public Hearings.
2. The governing body, shall hold a public hearing to consider the request to designate the historic district and the adoption of the Historic District Preservation Plan. The protest petition procedures as established for a petition for zoning map change in paragraph 3.5.13, Valid Protest Petition, may apply to the designation or amendment of an historic district.
3. If the governing body denies a request for designating an historic district, property owners may not initiate a new request to designate an historic district for the same area until at least one year after the governing body's action to deny the request.
4. When the governing body designates an area as an historic district, the Historic District Preservation Plan for the particular historic district shall become City or County policy and all appropriate public bodies or administrative officials cited as having implementation responsibilities shall be directed to use their best efforts to ensure the effective implementation of the Plan as it is written.

3.16.3 Designation of an Historic Landmark

A. Application

1. An application for an historic landmark designation shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
2. Requests for designation shall include the specific elements of the property for which historic landmark designation is proposed.

B. Action by the Historic Preservation Commission

1. In accordance with NCGS §160A-400.6(2), the HPC shall make or cause to be made an investigation and report on the prehistorical, historical, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Office of Archives and History, North Carolina Department of Natural and Cultural Resources.

C. Criteria for Designation

1. A building, structure, site, area or object may be considered for designation as an historic landmark only if all of the following three criteria are met:
 - a. The property must not currently be undergoing renovation unless it has been approved for state or federal tax credits in accordance with the Secretary of Interior Standards;
 - b. The HPC must deem and find that the building, structure, site, area, or object meets at least one of the three following criteria:
 - (1) Individual listing on the National Register of Historic Places or on the Study List;
 - (2) Statewide Significance status granted by the State Historic Preservation Office;
 - (3) Integrity of location, design, setting, materials, and workmanship, feeling and association on the whole, and:
 - (a) Is associated with events that have made a significant contribution to the broad patterns of local, regional, or national history; or
 - (b) Is associated with the lives of persons significant in local, regional, national history; or
 - (c) Embodies the distinctive characteristics of a type, period, or method of construction; represents the work of a master; possesses high artistic values (i.e., the architecture alone is significant in its own right); or
 - (d) Has yielded, or may be likely to yield, information important to Durham's history or prehistory.
 - c. The governing body must deem and find that the property possesses distinction within the context or period of significance.

Commentary: A building, structure, site, area or object whose components lack individual distinction may still be considered a landmark if the whole is significant.

2. A property shall be designated as a historic landmark only with the consent of the property owner or owners.

D. Action by the NC Department of Natural and Cultural Resources

In accordance with NCGS §160A-400.4(2), the NC Department of Natural and Cultural Resources shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan. Failure of the NC Department of Natural and Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the governing body may at any time thereafter take action on the proposed historic district and Historic District Preservation Plan.

E. Action by the Historic Preservation Commission

1. In accordance with NCGS §160A-400.6(2), the HPC shall make or cause to be made an investigation and report on the prehistorical, historical, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.
2. The HPC shall hold a public hearing and give notice in accordance to paragraph 3.2.5, Notice and Public Hearings, on the proposed ordinance of designation. It shall recommend to the governing body, denial of designation or approval of designation of the proposed historic landmark.

F. Action by the NC Department of Natural and Cultural Resources

In accordance with NCGS §160A-400.4(2), the NC Department of Natural and Cultural Resources shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan. Failure of the NC Department of Natural and Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the governing body may at any time thereafter take action on the proposed historic district and Historic District Preservation Plan.

G. Action by the Governing Body

1. The governing body, after ensuring that the other governing body has been notified, shall hold a public hearing and give notice in accordance paragraph 3.2.5, Notice and Public Hearings, on the proposed ordinance of designation.
2. Following the public hearing, the governing body may adopt the ordinance of designation as proposed, adopt the ordinance of designation with any amendments it deems necessary, or reject the proposal.

H. Adoption of an Ordinance of Designation

Upon compliance with the required procedures of this section, the governing body may, for its respective jurisdiction, adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. The ordinance shall include the following information:

1. A legal description of each property designated by the ordinance, including the tax identification number for the property. The ordinance shall clearly indicate what elements of the property are designated as an historic landmark. Examples of those elements are a building's interior, its exterior, any specific or all outbuildings, other site elements or the entire site;
2. The name or names of the owner or owners of the property;
3. A description of those elements of the landmark that are integral to its educational, cultural, historical, architectural or prehistorical value;
4. The land area of the property;
5. A note that structural and site improvements shall require approval of a certificate of appropriateness pursuant to Sec. 3.17, Certificate of Appropriateness, if applicable; and that, for each building, structure, site, area or object, the waiting period set forth in paragraph 3.17.6, COA for Demolition, Destruction and Relocation of this Ordinance shall be observed prior to its demolition; and
6. Any other information the HPC deems necessary.

I. Historic Markers

The ordinance designating the landmark may also provide for suitable markers on the property noting that the landmark has been so designated, including but not limited to signs, plaques or other appropriate indicators. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way.

J. Action Following Designation

Upon adoption of the ordinance of designation, the following provisions shall apply:

1. The owners and occupants of each designated historic landmark shall be given written notification of such designation by the Planning Director, or designee, insofar as reasonable diligence permits.
2. One copy of the ordinance and each amendment thereto shall be filed by Planning Director, or designee, in the Office of the Register of Deeds of Durham County. Each historic landmark designated in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the Office of the Register of Deeds.
3. One copy of the ordinance and each amendment thereto shall be given to the Inspections Director, or designee.
4. For historic landmarks, one copy of the ordinance and each amendment thereto shall be kept on file in the Office of the City or County Clerk, as appropriate, and made available for public inspection at any reasonable time.
5. The fact that a building, structure, site, area or object has been designated as an historic landmark shall be clearly indicated on all maps maintained by Durham County for tax purposes for such period as the designation remains in effect.
6. The Planning Director, or designee, shall give notice of the adoption of an ordinance of designation and any amendment thereof to the Durham County Tax Supervisor. The designation and any recorded restriction upon the property limiting its use for

preservation purposes shall be considered by the Tax Supervisor in appraising it for tax purposes.

K. Effect of Subdivision or Recombination

1. Designation shall remain applicable to all properties subdivided from the originally designated property.
2. When designated property is recombined with non-designated property, the designation shall remain applicable only to the improvements and portion of property originally designated, and shall not extend to improvements and the portions of the recombined property not originally designated.

3.16.4 Designation of a Landmark Sign

A. Procedure

The following procedure shall be used to designate signs as Landmark Signs. No sign shall be considered a Landmark Sign unless it has received that designation through this process.

1. An application for a landmark sign designation shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
2. The Planning Director, or designee, shall forward the application and all supporting material to the Historic Preservation Commission.
3. The applications shall be considered by the Historic Preservation Commission. The Commission shall review the application and may designate the sign as a Landmark Sign, deny the designation, or request additional information in order to make a decision. A sign which is denied a designation shall be considered a nonconforming sign which shall be removed.
4. If the sign is designated as a Landmark Sign, a copy of the application shall be submitted to the Inspections Department. After designation, the applicant shall have 60 days to bring any signs that pose a hazard into a structurally safe condition. Failure to assure that the signs are safe and do not pose a hazard shall result in loss of the Landmark Sign designation. The Inspections Department shall issue a sign permit for the sign if the sign is found to be structurally safe. Landmark Signs shall conform to all other provisions of this section not in conflict with the privileges of the landmark designation.
5. Landmark signs shall be subject to the privileges and regulations of Sec. 11.7, Landmark Signs, but Article 11, Sign Standards, shall otherwise not apply.

B. Approval Criteria

The Historic Preservation Commission may establish a schedule to review applications for Landmark Sign designations. To qualify as a Landmark Sign, the sign shall meet all of the following criteria:

1. Be recognized as important to the culture or history of the jurisdiction, or possess unique characteristics, or incorporate materials or craftsmanship not commonly found in newer signs.
2. Bear a close resemblance to its appearance when it was installed.

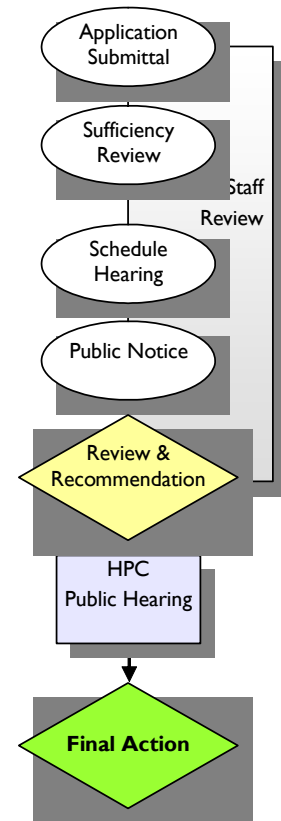
3.16.5 Repeal of Historic District or Historic Landmark Designation

- A.** A petition to remove a local historic district overlay designation on property, along with revision to the applicable preservation plan, shall follow the same procedures for a zoning map change, and shall also require the following prior a public hearing with the Planning Commission:
 - 1.** The petition shall be sent to the State Historic Preservation Office for a review consistent with paragraph 3.16.2C, Action by the NC Department of Cultural Resources.
 - 2.** A public hearing for review and recommendation by the Historic Preservation Commission consistent with paragraph 3.16.2D, Action by the Historic Preservation Commission.
- B.** The governing body may repeal an ordinance designating an historic district or an historic landmark. The repeal process shall be consistent with the adoption process prescribed within NCGS §160A-400.6. The governing body's action to repeal an ordinance of designation shall include the reasons for the repeal and a review by the State Historic Preservation Office.
- C.** When such repeal occurs, the Planning Director, or designee, shall notify the HPC and the property owner or owners. When such repeal occurs of an historic landmark designation, the Planning Director, or designee, shall also notify the Register of Deeds for Durham County and the Durham County Tax Supervisor.

Sec. 3.17 Certificate of Appropriateness (COA)

3.17.1 Applicability

- A. From and after the designation of an historic district or historic landmark, no exterior feature or designated portion of any building or other site work (including masonry walls, fences, light fixtures, steps, pavement, above-ground utility and mechanical equipment, signs, landscaping, and other appurtenant features) shall be erected, altered, restored, moved or demolished within a historic district or on such historic landmark until after an application for a certificate of appropriateness (COA) as to the exterior feature or designated portion has been submitted to and approved by the Historic Preservation Commission (HPC).
- B. Work done by the City and County and by public utility companies shall be subject to the provisions of this section.
- C. For the purposes of this section, the term "exterior feature" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features. In the case of outdoor advertising signs, the term "exterior features" shall be construed to mean the style, material, size and location of all such signs. These "exterior features" may include historic signs and significant landscape, archaeological and natural features of the area.
- D. For the purposes of this section, the term "designated portion" shall mean any portion of an historic landmark that was included in the ordinance designating the landmark, including the main structure or structures, the interior or portions of the interior, any outbuildings or secondary structures, site elements and landscaping.
- E. A COA shall be required whether or not another permit is required.
- F. **Work Not Requiring a COA**
 1. Nothing in this Ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior feature in the historic district or on an historic landmark which does not involve a substantial change in the design, material, or outer appearance thereof, as described in the *Historic Properties Local Review Criteria*, as amended.
 2. Nor shall this Ordinance be construed to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which is determined to be a threat to the public safety. The Inspections Director, or designee, shall certify in writing to the approving authority that such action is required for the public safety because of an unsafe or dangerous condition.
 3. Nothing herein shall be construed to prevent a property owner from making any use of his or her property not prohibited by other statutes, ordinances or regulations.



4. No certificate of appropriateness shall be required for interior changes. However, this does not excuse the property owner from obtaining required building permits for interior work.

3.17.2 Coordination with Other Permits

The City or the County shall not grant any building permit or other permit for the purposes of constructing, altering, moving or demolishing any structure within or on an historic district or historic landmark for which a COA has not been approved.

3.17.3 Application Requirements

- A. An application for a COA shall be submitted in accordance with paragraph 3.2.4, Application Requirements.
- B. An applicant may file with the application any additional relevant information bearing on the application.

3.17.4 Minor Works COA

- A. Pursuant to the HPC rules of procedure, the Planning Director, or designee, may approve or amend COAs for the following activities, or may refer them to the HPC for a decision:
 1. Activities expressly authorized by the HPC;
 2. Minor design changes to projects for which a COA has been issued by the HPC; or
 3. Anything not specifically covered by this section that the Planning Director or designee determines is not so significant as to impair or affect historic, architectural, or aesthetic character.
- B. A public hearing or public notice shall not be required unless the application is referred to the HPC for a major works COA.
- C. Conformance to the applicable design review criteria within the adopted *Historic Properties Local Review Criteria*, as amended, shall be required in order to approve or amend a COA.
- D. Conditions may be placed upon a COA as part of the approval in order to facilitate compliance with the *Historic Properties Local Review Criteria*, as amended. A violation of any conditions shall be considered a violation of the COA.

3.17.5 Major Works COA

The HPC shall be the approving authority for any improvement to property within a local historic district or with a local historic landmark designation that requires a COA, but does not qualify as a minor COA.

A. Notification of the Commission

The Planning Director, or designee, shall notify the members of the HPC at least seven calendar days before its regularly scheduled meeting of any pending applications scheduled for the public hearing.

B. Action by the Historic Preservation Commission

1. The HPC shall hold a public hearing for a major works COA. Public notice of applications shall be provided pursuant to paragraph 3.2.5, Notice and Public Hearings.
2. As part of its review procedure, the HPC may view the premises and seek the advice of the North Carolina Department of Natural and Cultural Resources or other expert advice as it may deem necessary under the circumstances.
3. The HPC shall approve, approve with modifications or conditions, or disapprove an application for a major works COA.
4. Prior to final action on an application for a certificate of appropriateness in an historic district, the HPC, using the applicable design review criteria adopted within *the Historic Properties Local Review Criteria*, as amended, shall make findings of fact indicating the extent to which the application is or is not consistent with the historic character and qualities of the historic district.
5. Prior to final action on an application for a certificate of appropriateness for an historic landmark, the HPC, using the and applicable design review criteria adopted within the *Historic Properties Local Review Criteria*, as amended, shall make findings of fact indicating the extent to which the application is or is not consistent with the historic character and qualities of the historic landmark property.
6. The HPC may not deny a certificate of appropriateness for demolition except as specified in paragraph 3.17.6, COA for Demolition, Destruction and Relocation.

C. Approval Criteria for Historic Districts

1. For historic districts, the intent of these regulations is to ensure, insofar as possible, that buildings or structures in the historic district shall be in harmony with other building or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or to prohibit the demolition or removal of such buildings or to impose architectural styles from particular historic periods. In considering new construction, the HPC shall encourage contemporary design which is harmonious with the character of the historic district.
2. In granting a COA, the HPC shall take into account, in accordance with the *Historic Properties Local Review Criteria*, as amended:
 - a. The historic or architectural significance of the structure under consideration in relation to the historic value of the district;
 - b. The exterior form and appearance of any proposed additions or modifications to that structure; and
 - c. The effect of such additions or modifications upon other structures in the vicinity.
3. The HPC may place conditions upon a COA as part of the approval in order to facilitate compliance with the *Historic Properties Local Review Criteria*, as amended. A violation of any condition shall be considered a violation of the COA.

D. Approval Criteria for Historic Landmarks

1. In granting a COA, the HPC shall take into account in accordance with the principles and design review criteria adopted for historic landmarks, namely the *Historic Properties Local Review Criteria*, as amended:
 - a. The historic or architectural significance of the structure, site or setting under consideration; and
 - b. The exterior form and appearance of any proposed additions or modifications to the structure, site or setting.
2. The intent of these regulations is to ensure, insofar as possible, that changes to buildings or structures designated as historic landmarks shall be in harmony with the historic character that was cited as the reasons for designation.
3. The HPC may place conditions upon a COA as part of the approval in order to facilitate compliance with the *Historic Properties Local Review Criteria*, as amended. A violation of any condition shall be considered a violation of the COA.

E. Deferral of Application

1. An applicant for a COA may request that the HPC's consideration of the application be deferred to a specific date.
2. Upon such request, the Planning Director, or designee, shall have the authority to grant the deferral.
3. A request for deferral shall be made in writing to the Planning Director, or designee, at least ten days prior to the scheduled consideration of the application and shall indicate the date to which the deferral is requested and the reasons for the deferral. Only one deferral shall be permitted for each application.

F. Time Limits

1. Final action shall be taken upon any application for a COA within 180 days after the complete application is submitted to the Planning Director or designee. Such 180-day time period shall include any continuance or deferred consideration by the HPC or deferral granted as requested by the applicant under paragraph 3.17.12, Deferral of Application. If final action is not taken within such 180-day time period, the application shall be deemed approved.
2. A master COA shall expire four years after the effective date, and all other COAs shall expire two years after the effective date, if:
 - a. A building permit or other development permit has not been issued;
 - b. A building or other development permit has expired; or
 - c. If work not requiring a permit has not been initiated.

3.17.6 COA for Demolition, Destruction, and Relocation

- A. An application for a certificate of appropriateness authorizing the demolition, destruction or relocation of a structure in a designated historic district or of a designated historic landmark shall not be denied. However, the effective date of such a certificate of appropriateness may be delayed for a period of up to 365 days from the date of approval. This maximum period of

delay shall be reduced by the HPC when it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such structure or landmark by virtue of the delay. During such period, the HPC may negotiate with the owner and with any other parties in an effort to find a means of preserving the structure or landmark.

- B. If the HPC finds that the structure has no particular significance or value toward maintaining the character of an historic district, it shall waive all or part of such period and authorize earlier demolition or removal.
- C. If the HPC finds that the structure has no particular significance or value toward maintaining the character of an historic district, it shall waive all or part of such period and authorize earlier demolition or removal. An application for demolition, destruction and relocation of a building, site or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the HPC finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such structure or landmark by virtue of the denial.

3.17.7 Master COA for Public Projects

- A. Rather than obtaining individual COA for each proposed project in an historic district, the City and County and public utility companies may instead obtain a master COA from the HPC.
- B. The provisions of this section that apply to COAs shall also apply to master COAs.
- C. In addition to acquiring a master COA, the City and County and any public utility companies shall notify the City Manager or County Manager, as appropriate, prior to performing any work within any historic district. In emergency situations, as determined by the Inspections Director, or designee, notification by the next work day is acceptable. Such work shall be done in accordance with the *Historic Properties Local Review Criteria*, as amended, adopted for the historic district as part of the Historic District Preservation Plan. The City Manager or County Manager, as appropriate, may inspect all work done pursuant to a master COA.

3.17.8 Submission of New Application

If the HPC denies an application for a COA, a new application affecting the same property may be submitted only if substantial changes are made in plans for the proposed construction, reconstruction, alteration, restoration, moving or demolition, or if conditions related to the historic district or historic landmark or surrounding uses have changed substantially.

3.17.9 Local and State Coordination

The HPC shall use all reasonable efforts to expedite any concurrent process with the North Carolina Department of Natural and Cultural Resources if such a process is desired by the applicant for the purpose of securing both a certificate of appropriateness and a Federal historic preservation tax credit.

3.17.10 Specific Enforcement

- A. Compliance with the terms of a COA shall be enforced by the Inspections Director, or designee. Construction or other work which fails to comply with a COA shall be a violation of this Ordinance and subject to Article 15, Enforcement. The discontinuance of work for a period of six months shall be considered a failure to comply with a COA.

- B. Nothing contained in this section shall prohibit, impair or limit in any way the power of the City or County to prevent the construction, reconstruction, alteration, restoration or removal of buildings, structures, appurtenant fixtures or outdoor signs in the historic district in violation of the provisions of this Ordinance. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.
- C. Failure to obtain a required COA prior to commencing work shall be subject to Article 15, Enforcement.

3.17.11 Appeal

An appeal of a decision of the Commission in granting or denying any certificate of appropriateness is taken to the Board of Adjustment. An appeal may be taken by any aggrieved party, shall be taken within times prescribed by the Commission's Rules of Procedures, and shall be in the nature of *certiorari*. Appeal of the Board of Adjustment action may be taken by filing a petition for *certiorari* with the Durham County Superior Court.

Sec. 3.18 Demolition by Neglect (City Only)

3.18.1 Applicability

Owners of certain historic properties are required to maintain their properties and not allow them to fall into disrepair. The requirements of this subsection are applicable only to certain properties, termed "historic properties" in this subsection. That term as used in this subsection is defined to include designated historic landmarks and properties identified as "contributing" or "pivotal" in designated historic districts.

A. Conditions of Neglect Defined and Prohibited

Owners shall maintain or cause to be maintained the exterior and structural features of their historic properties and not allow conditions of neglect to occur on such properties. Conditions of neglect are as defined below. It shall be a violation of this Ordinance to not remedy a condition of neglect within the period of time set by a final administrative determination, as described in subsequent subsections of this Ordinance. Conditions of neglect include the following:

1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
2. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
3. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
4. Deterioration or crumbling of exterior plasters or mortars.
5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
6. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
7. Rotting, holes, and other forms of decay.
8. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
9. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
10. Deterioration of fences, gates, and accessory structures.
11. Deterioration that has a detrimental effect on the surrounding historic district, or on the special character of the historic landmark.
12. Deterioration that contributes to a hazardous or unsafe condition.

3.18.2 Process and Administration

A. Director Investigation and Determination

1. Initiation by Petition

The initial determination that there is a condition of neglect shall be made by the Planning Director, or designee, after an investigation that is initiated by a petition from

any person who is familiar with the subject property, which may include but not be limited to a City employee.

2. Notice of Investigation

On receipt of a petition, the Director, or designee, shall notify the owners in writing of the allegation and the process for making a decision regarding the petition, including any applicable deadlines. Among other things, the notice shall offer the owner the opportunity to meet in person with the Director, or designee, and to present any relevant information. Notice shall be delivered by personal service, or by certified or registered mail, return receipt requested. If certified mail is refused or unclaimed, notice may be delivered by first class mail, and shall be considered effective if such mail is not returned by the post office within 15 days of mailing. In the case of notice by first class mail, notice shall also be posted on the property. Notice of the investigation may also be given to the owners of nearby or adjacent properties or neighborhood associations.

3. Responsibilities of Director

The Planning Director or designee shall:

- a. Investigate the allegation that a condition of neglect exists;
- b. Hold one or more meetings at a time to be set by the Director, or designee, in which the owner, other persons who have received notice, or other interested persons may give information;
- c. Issue a written determination, supported by findings of fact, regarding the allegation within 45 days of the owner's receipt of notice;
- d. Include within the determination a time period for correcting the condition of neglect, if a condition of neglect has been found;
- e. Retain all information presented by the owner or other persons;
- f. Deliver the written determination through any of the means for delivery of notice, as described above;
- g. Designate the written determination as a final administrative determination with the right of appeal to the HPC; and
- h. Include information regarding rights to a *de novo* hearing before the HPC.

B. Suspension of Process

The above process may be suspended in the event the owner agrees in writing to correct the alleged condition of neglect within a time period determined to be reasonable by the Director, or designee. If the condition is not corrected within that time period, the process shall continue where it was suspended.

C. Appeal of Director's Determination

If the property owner disagrees with the Director's determination, the owner can appeal and may request a *de novo* hearing before the HPC. The request shall be delivered to the Planning Department, in writing, within 30 days of receipt of the Director's determination. The HPC shall hold a quasi-judicial hearing on the issue of whether demolition by neglect is occurring on the property. Procedures that would be followed by the Board of Adjustment (BOA) in a quasi-judicial proceeding shall be used. The Director's determination shall be

considered an administrative determination, which has been appealed to the HPC, as the designated Planning Agency under GS 160A-388 or 153A-321 and all procedures applicable to the Board of Adjustment in GS 160A-388 and GS 153A-345 shall apply to such hearings. The HPC's determination to overturn the administrative determination shall be passed by the standards established in paragraph 2.4.6. The HPC's written decision shall include findings of fact and conclusions regarding demolition by neglect consistent with this subsection. It shall be delivered to the appealing party by certified mail, return receipt requested. Appeal to the Courts can be had by *certiorari* as is provided for an appeal of a Board of Adjustment decision. If the decision is not appealed it shall be considered a final decision subject to enforcement with no rights of appeal.

D. Safeguards from Undue Economic Hardship

1. Right of Claim of Economic Hardship

The property owner is entitled to make a claim of undue economic hardship if the owner is unable to make needed repairs to the property because it is economically unfeasible.

2. Issuance of Stay for Economic Hardship

In the event that the owner and/or other parties in interest do not wish to contest the determination regarding the condition of neglect, but do wish to petition for a claim of undue economic hardship, the Director's order shall be stayed until after the HPC's determination regarding the claim.

3. Process

If a claim of undue economic hardship is made, the Planning Director or designee shall receive all information from the property owners that the HPC is entitled to receive pursuant to this Ordinance, make a determination regarding whether there is undue economic hardship, and develop a plan for dealing with such hardship, if it is found to exist. The recommendation and plan shall be sent to the owner, by certified mail, return receipt requested, with notice of the owner's rights to appeal to the HPC within 30 days of receipt. If the owner disagrees with the recommendation and plan, the owner may request a hearing before the HPC. In the event of such a request, the hearing shall be a quasi-judicial hearing, in the nature of a BOA hearing and the decision shall be in writing, supported by findings and conclusions. The Planning Director's determination as to economic hardship and the plan for dealing with that hardship shall be considered a final administrative determination, and any HPC decision altering such recommendation or plan shall be passed by the standards established in paragraph 2.4.6, Decisions.

4. Evidence Regarding Undue Economic Hardship

When a claim of undue economic hardship is made owing to the effects of this Article, the owner and/or parties in interest shall, where reasonably possible, provide the evidence below, describing the circumstances of hardship, and any additional evidence requested by the Director, or designee, or HPC or evidence the owner considers relevant.

- a. Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.
- b. Financial resources of the owner and/or parties in interest.
- c. Cost of repairs.
- d. Assessed value of the land and improvements.
- e. Real estate taxes for the previous two years.
- f. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
- g. Annual debt service, if any, for previous two years.
- h. Any listing of the property for sale or rent, price asked, and offers received, if any.
- i. Annual gross income, if any, from the property for the previous two years.
- j. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed.
- k. Annual cash flow, if any, for the previous two years.

5. Plan to Relieve Economic Hardship

A recommended plan to relieve the economic hardship shall include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the City, the County, or other public, private, or nonprofit sources, acquisition by purchase or eminent domain, changes in applicable zoning regulations, or relaxation of the provisions of this Article sufficient to mitigate the undue economic hardship. The Director, or designee, shall issue an order regarding the time period during which the property should be repaired, taking into account the provisions of the recommended plan.

E. Other City Powers; City's Election of Remedies

Nothing contained within this Article shall diminish the City's power to declare a building unsafe or in violation of the minimum housing code or any other applicable statute or code. In addition, the procedures described herein are mandatory only for determinations being made solely under the authority of this section. Where other sections of the City Code apply, the City may, in its discretion, choose to process any action regarding the property under such other provisions alone, or under such provisions along with these provisions concurrently, or solely under these provisions. The City may also suspend the procedures of this section at any time if an action has been initiated under other applicable law.

F. Penalties and Remedies

Enforcement of this Article shall be by any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

1. Equitable Remedy

The City may apply for any appropriate equitable remedy to enforce the provisions of this Article.

2. Order of Abatement

The City can apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this Article. Whenever the party is cited for contempt by the court and the City has executed the order of abatement, the City shall have a lien on the property for the cost of executing the order of abatement.

3. Civil Penalty

Civil penalties can be assessed for failure to comply with a final administrative determination or an un-appealed HPC decision under the provisions and guidelines for assessing such penalties for zoning code violations. Prior to imposing a civil penalty the City-County Planning Department shall deliver a written notice by personal service or by registered mail or by certified mail, return receipt requested, to the person responsible for the violation indicating the nature of the violation and ordering corrective action. Where the violation is the failure to remedy a condition of neglect within the time periods provided by the Director, or designee, or the HPC no additional time period for compliance need be given. The notice shall include information regarding the possible assessment of civil penalties and other possible enforcement actions. If this notice is appealed to the Board of Adjustment, the Board shall not rehear any issue that was heard by the HPC or could have been so heard had an appeal to the HPC been made. Rather, the Board of Adjustment shall limit the scope of its review to whether there has been compliance with the Director's determination or the HPC's determination, as applicable.

Sec. 3.19 Text Amendment

3.19.1 General

- A. The governing bodies are the approving authority for amendments to the text of this Ordinance.
- B. Amendments to the text of this Ordinance shall be made in accordance with the provisions of this section.
- C. A request to amend the text of this Ordinance may be initiated by the governing body, the Board of Adjustment, the Planning Commission, the City Manager, the County Manager, the Planning Director, or designee, or a citizen.

3.19.2 Action by the Planning Director

- A. The Planning Director, or designee, shall be responsible for review and recommendation regarding amendments to the text of this Ordinance that affect only City or County jurisdictions.
- B. When a text amendment is initiated, the Planning Director, or designee, shall draft an appropriate ordinance and present that ordinance to the Planning Commission for review and recommendation at a public hearing.
- C. A request to amend the text of this Ordinance may be initiated by the governing body, the Board of Adjustment, the Planning Commission, the City Manager, the County Manager, the Planning Director, or designee, or a citizen.

3.19.3 JCCPC Review

The JCCPC shall be responsible for review and direction regarding amendments to the text of this Ordinance that affect both the City and County jurisdictions prior to review by the Planning Commission. This responsibility does not create a legal obligation for review of text amendments. Among other instances, review may not occur in the event that the City and County Managers, after consultation with the chair and vice-chair of the JCCPC, determine that delay is not in the public interest.

3.19.4 Action by the Planning Commission

A. General Procedures

- 1. Before making any recommendation on a text amendment, the Planning Commission shall consider any recommendations from the Planning Director, or designee, and shall conduct a public hearing where interested parties may be heard.
- 2. Notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
- 3. The Commission shall make its recommendation within 90 days of its initial public hearing unless the text amendment is granted expedited status.
- 4. When a recommendation is not made within the time periods established in this section, the governing body may process the request without a Commission recommendation.

B. Changed Application

If the applicant makes significant changes to the application for a text amendment after the Commission has made its recommendation, the Planning Director, or designee, may refer the modified request back to the Commission for an additional public hearing.

C. Expedited Hearing

1. If the governing body has set an expedited hearing concerning a request, in accordance with paragraph 3.19.5B, Expedited Hearing, a public hearing before the Commission shall be held at the first available hearing date or prior to the hearing before the governing body.
2. The Commission shall make a recommendation based on the approval criteria in paragraph 3.5.10, Review Criteria, as appropriate.
3. The Planning Commission may not continue, nor may a deferral be granted for, a request that is subject to an expedited public hearing.

3.19.5 Action by Governing Body

A. General Procedures

1. Before taking action on a text amendment, the governing body shall consider the recommendations of the Planning Commission and Planning Director, or designee, and shall conduct a public hearing.
2. Except for an emergency moratorium or a short term moratorium of 60 or fewer days (which shall comply with the provisions of paragraph 3.19.6, Development Moratoria), notice and public hearing requirements shall be in accordance with paragraph 3.2.5, Notice and Public Hearings.
3. Following the public hearing, the governing body may approve the amendment, deny the amendment, or send the amendment back to the Planning Commission or a committee of the governing body for additional consideration.
4. Text amendments, if approved, shall only have applicability within the jurisdiction of the governing body that approved the change.

B. Expedited Hearing

1. The governing body, in situations in which it determines certain standards have been met, may expedite the hearing process on a proposed or prospective amendment.
2. The governing body may consider a written request requesting an expedited hearing process. The request shall identify and support the reasons for such expedited consideration.
3. In order to grant the request, the governing body shall find that at least one of the criteria below has been met:
 - a. Deadlines set by the local, State or Federal government for receipt of application for needed funding, designation or other regulations concerning the property make expedited consideration necessary;
 - b. The prospective text amendment results from an emergency beyond the control of the applicant, such as response to a disaster;

- c. The prospective text amendment addresses an urgent matter of public health or safety; or
 - d. The prospective text amendment addresses issues raised in threatened, actual, or potential litigation against the jurisdiction that made expedited consideration necessary.
- 4. A hearing before the governing body may occur upon the receipt of a Planning Commission recommendation, or the expiration of a 30-day period, whichever comes earlier.

3.19.6 Development Moratoria

A. Statutory Procedures

Development moratoria, if necessary, shall be considered and processed in accordance with the special notice provisions, particular findings, and other requirements of NCGS 160A-381(e) and NCGS 153A-340(h).

B. Resolution

A public hearing to impose either a moratorium of 60 or fewer days (hereafter a “short-term moratorium”) or a lengthier moratorium of 61 days to a year may be initiated by a governing body for that body’s jurisdiction upon passage of a resolution, including appropriate supportive findings, that calls for a public hearing. Passage of such a resolution shall be considered a “call for public hearing” under the above-cited statutes and shall allow the jurisdiction to stop acceptance, review, and approval of applications for development approvals described in the above-cited statutes or such other similar development approvals created under this Ordinance or other development ordinances.

C. Notice and Hearing

If the call is for a short-term moratorium, Planning Commission review shall not be required, and one published notice not less than 7 days prior to the hearing shall be given, as allowed under the above-cited statutes, in lieu of other notices required by statute or this Ordinance. If the call is for a lengthier moratorium, the procedure followed shall be as set forth in the provisions for expedited hearings for text amendments above. The need for a moratorium shall be considered “an urgent matter of public health or safety” as required for approval of an expedited hearing. Emergency moratoria shall not require compliance with any procedures set forth in this Ordinance, other than an unadvertised public hearing, and an ordinance making the findings required below.

D. Duration

The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Any ordinance establishing a lengthier moratorium shall include a provision that allows for termination of the moratorium by resolution of the governing body prior to the express expiration date if the conditions requiring the moratorium have been adequately addressed so that the moratorium is no longer necessary.

E. Ordinance Findings

An ordinance establishing a moratorium shall contain all the required findings set forth in NCGS 160A-381(e) and NCGS 153A-340(h), including but not limited to the conditions that

necessitate the moratorium, alternatives, development approvals subject to the moratorium, termination date, and reasonableness of the moratorium period.

F. Extensions

A moratorium shall only be extended upon compliance with NCGS 160A-381(e) and NCGS 153A-340(h) and the existence of new facts and conditions warranting an extension.

G. Emergency Moratorium

In the event that there is an imminent and substantial threat to public health or safety, an ordinance imposing an emergency moratorium can be considered by a governing body without prior resolution or public notice of the hearing on such moratorium.

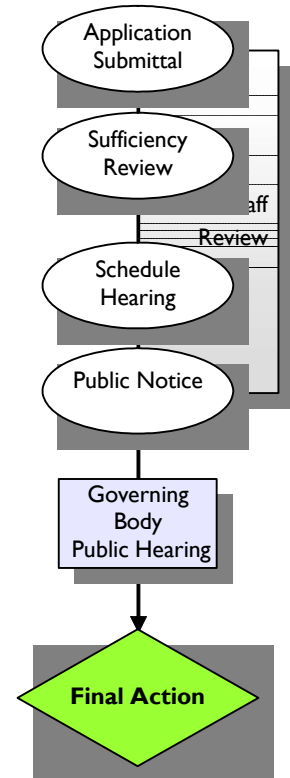
Sec. 3.20 Statutory Vested Rights Determination

3.20.1 Applicability

- A. This section establishes a procedure for obtaining a statutory vested right in conformance with NCGS §153A-344.1 and NCGS §160A-385.1.
- B. New or amended zoning regulations shall not apply to a property with an established vested right until the vested right expires or is terminated.
- C. A vested right may be established upon approval of a "site specific development plan." In order to qualify as a "site specific development plan," a plan shall be a development plan approved as a site plan or preliminary plat in accordance with Sec. 3.5, Zoning Map Changes; a preliminary plat approved in accordance with Sec. 3.6, Subdivision Review; or a site plan approved in accordance with Sec. 3.7, Site Plan Review.

3.20.2 Application Requirements

- A. An application for vested rights determination shall be submitted in accordance with paragraph 3.2.4, Application Requirements.



- B. Applications shall include, at a minimum, the following information in addition to the standard information required pursuant to paragraph 3.2.4, Application Requirements:
 - 1. Information on the proposed uses of the property that the applicant wishes to vest;
 - 2. The length of time for which vesting is requested;
 - 3. A listing of those provisions of this Ordinance from which vesting is requested;
- C. Landowners seeking zoning vested rights on plats, special use permit applications, or other plans that would not normally receive site plan approval, can apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans required for a complete site plan application and an additional fee for a vested rights public hearing.

3.20.3 Action by the Planning Director

Once the application has been determined complete, the Planning Director, or designee, shall schedule a public hearing, give public notice as set forth in paragraph 3.2.5, Notice and Public Hearings, and forward a copy of the application with all related materials to the appropriate governing body.

3.20.4 Action by the Governing Body

- A. The governing body may hold the vested rights public hearing at the same time that the site plan is considered for approval.
- B. Approval by the governing body shall confer upon the owner of the property a zoning "vested right" as defined in NCGS §160A-385.1 and NCGS §153A-344.1, effective on the date of approval. The governing body may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare.

3.20.5 Effect of Zoning Vested Rights

- A. Following approval or conditional approval of a site specific development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- B. Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or with this Ordinance.
- C. The establishment of a zoning vested right shall not preclude the application of new laws or regulations as is allowed under NCGS §160A-385.1. In addition, it shall not preclude overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the City or County. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this section.
- D. A zoning vested right is not a personal right, but shall be attached to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

3.20.6 Duration

- A. A zoning right that has been vested as provided in this section shall remain vested for the period specified by the governing body, which shall be a minimum of two years but no more than five years from the date of the vested rights determination. The expiration and validity of site plans and plats issued pursuant to the vested rights determination that extend beyond the vesting period shall be governed by the provisions of this ordinance. Substantial amendments and modifications to an approved site specific development plan shall not be accorded "vested rights" unless such changes are processed as a new "site specific development plan." Each approved site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under NCGS §160A-385.1 or NCGS §153A-344.1. Unless terminated at an earlier date, the zoning vested rights shall be valid until (Insert date)."
- B. A building permit shall not expire or be revoked because of the passage of time while a zoning vested right under this section is outstanding.
- C. A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to portions of the development that do not have

approved and continuously valid site plans and preliminary plats, or buildings and uses for which no valid building permit applications have been filed.

3.20.7 Termination

A zoning vested right as provided in this section shall terminate when any one of the following circumstances apply:

- A. At the end of the applicable vesting period;
- B. With the written consent of the affected landowner;
- C. Upon findings by the governing body by ordinance and after public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
- D. Upon payment of compensation to the affected owner for all costs, expenses, and other losses incurred by the landowner together with interest;
- E. Upon findings by the governing body by ordinance and after public hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the governing body of the site specific development plan; or
- F. Upon the enactment of a State or Federal law or regulation or local ordinances enacted in compliance with such laws or regulations that preclude development as contemplated in the site specific development plan.

3.20.8 Annexation

- A. Property that is annexed shall retain any vested rights throughout the original vesting period subject to the limitations of paragraph B below.
- B. A property owner petitioning for annexation shall submit a signed statement declaring any existing vested right with respect to the properties subject to annexation, if the owner wishes to maintain the vested right. The failure to sign such a statement shall terminate any such vested right.

3.20.9 Limitations

Nothing in this section shall be deemed to create any vested rights other than those established under NCGS §160A-385.1 or NCGS §153A-344.1. In the event that either NCGS §160A-385.1 or NCGS §153A-344.1 is repealed, the provisions of this section are no longer effective to the jurisdiction involved.

Sec. 3.21 Floodplain Development Permit

3.21.1 Applicability

A floodplain development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas.

3.21.2 Floodplain Administrator

A. Designation

The Inspections Director, or designee, shall serve as the Floodplain Administrator. For this purpose, the Inspections Director, or designee, shall receive training and certification from the Association of Floodplain Managers.

B. Duties and Responsibilities

Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied;
2. Advise permittees that additional Federal or State permits (i.e., Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit;
3. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
5. Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of 8.4.3E, Floodway and Non-Encroachment Areas, are met;
6. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with the certification requirements in Sec. 3.21, Floodplain Development Permit;
7. Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with the certification requirements in Sec. 3.21, Floodplain Development Permit;
8. Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with the certification requirements in Sec. 3.21, Floodplain Development Permit;
9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the certification requirements in Sec. 3.21, Floodplain Development Permit and paragraph 8.4.3, Standards;

10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas or Future Conditions Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Article;
11. When Base Flood Elevation (BFE) data has not been provided in accordance with paragraph 8.4.2, Applicability, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to paragraph 8.4.3.C, Floodplains without Base Flood Elevations, in order to administer the provisions of this ordinance;
12. When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with paragraph 8.4.2, Applicability, obtain, review, and reasonably utilize any floodway data, and/or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance;
13. When the lowest ground elevation of a parcel or structure located within Zone AE is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file;
14. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, subject to the Privacy Act of 1974, as amended;
15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator, or designee, has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action;
16. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor;
17. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any

floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked;

18. Make periodic inspections throughout all Special Flood Hazard Areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action;
19. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and/or other official flood maps/studies adopted under paragraph 8.4.2, Applicability, including any revisions thereto including Letters of Map Change, issued by the State and/or FEMA. Notify State and FEMA of mapping needs; and
20. Follow through with corrective procedures of Sec. 15.6, Floodplain and Flood Damage Protection Enforcement and Penalties.
21. Maintain records of all floodplain development permits, actions by the Development Review Board, and major special use permits approving fill or development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas and report on them to the Federal Emergency Management Agency upon request.

3.21.3 Base Flood Elevations

A. Basis for Determination in Mapped Areas

Base flood elevations shall be based upon the Flood Insurance Rate studies described in paragraph 8.4.2, Applicability, when such studies define a base flood elevation.

- #### **B.**
- Development, including the construction of structures that only require building permits and land disturbing activity within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, as identified by the Federal Emergency Management Agency in the most current Flood Insurance Rate Studies, which are hereby adopted by reference and declared to be a part of this section, shall be prohibited unless carried out pursuant to the general standards in paragraph 8.4.3, Standards, or expressly authorized pursuant to paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas.

C. When Base Flood has not been Determined

1. When base flood elevations have not been determined, the Inspections Director, or designee, acting as the Floodplain Administrator, may require FEMA accepted hydrologic and hydraulic engineering studies, or may obtain, review, and reasonably utilize any base flood elevation data and floodway or non-encroachment area data available from a Federal, State, or other source in determining the appropriate base flood elevation.
2. On small streams where no base flood data has been provided, no encroachments, including fill, new construction, substantial improvements or new development, shall be permitted within the setbacks established in Sec. 8.5, Riparian Buffer Protection Standards, or Sec. 8.7, Watershed Protection Overlay Standards, or 20 feet each side from top of bank, or five times the width of the stream, whichever is greatest.

3.21.4 Application Requirements

- #### **A.**
- Application for a floodplain development permit shall be made to the Floodplain Administrator, or designee, prior to any development activities proposed to be located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The following

items/information shall be required as part of the application for a floodplain development permit:

1. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - a. the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
 - b. the boundary of the Special Flood Hazard Area or Future Conditions Flood Hazard Areas as delineated on the FIRM or other flood map as determined in paragraph 8.4.2, Applicability, or a statement that the entire lot is within the Special Flood Hazard Area or Future Conditions Flood Hazard Areas;
 - c. flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in paragraph 8.4.2, Applicability;
 - d. the boundary of the floodway(s) or non-encroachment area(s) as determined in paragraph 8.4.2, Applicability;
 - e. the Base Flood Elevation (BFE) or future conditions flood elevation where provided as set forth in paragraph 8.4.2, Applicability; paragraph 3.21.2B (11 and 12), Duties and Responsibilities; or paragraph 8.4.3, Standards;
 - f. the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
 - g. preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.
2. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area or Future Conditions Flood Hazard Area including but not limited to:
 - a. elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - b. elevation in relation to mean sea level to which any non-residential structure in Zone AE, A, AO, or X (Future) will be flood-proofed; and
 - c. elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
3. If floodproofing, a floodproofing certificate and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in paragraph 8.4.3, Standards.
4. A Foundation Plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:

- a. Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers); and
 - b. Should solid foundation perimeter walls be used in Zones AE and Zone X (Future), details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with paragraph 8.4.3, Standards.
5. Usage details of any enclosed space below the regulatory flood protection elevation;
6. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
7. Copy of all other Local, State and Federal permits required prior to floodplain development permit issuance (i.e. Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.);
8. If floodplain development permit is issued for placement of Recreational Vehicles and/or Temporary Structures, documentation to ensure the recreational vehicle and temporary structure requirements of paragraph 8.4.3, Standards are met; and
9. If a watercourse is proposed to be altered and/or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

3.21.5 Floodplain Development Permit Data Requirements

The following information shall be provided at a minimum on the floodplain development permit to ensure compliance with this code:

- A. A description of the development to be permitted under the floodplain development permit issuance;
- B. The Special Flood Hazard Area or Future Conditions Flood Hazard Area determination for the proposed development per available data specified in paragraph 8.4.2, Applicability;
- C. The regulatory flood protection elevation required for the reference level and all attendant utilities;
- D. The regulatory flood protection elevation required for the protection of all public utilities;
- E. All certification submittal requirements with timelines;
- F. State that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, if applicable;
- G. The flood openings requirements, if in Zone AE, A, O or X (Future).

3.21.6 Certification Requirements

- A. An Elevation Certificate (FEMA Form 81-31) or Floodproofing Certificate (FEMA Form 81-65) is required after the reference level is completed. Within twenty-one (21) calendar days of establishment of the reference level elevation, or floodproofing, by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, or floodproofed elevation, whichever is applicable in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land

surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the twenty-one (21) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the certification or failure to make said corrections required shall be cause to issue a stop-work order for the project.

- B. A Final As-Built Elevation Certificate (*FEMA Form 81-31*) or Floodproofing Certificate (*FEMA Form 81-65*) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation or floodproofed elevation of the reference level and all attendant utilities. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- C. If a manufactured home is placed within Zone AE, A, AO, or X (Future) and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per paragraph 8.4.3, Standards.
- D. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- E. Certification Exemptions. The following structures, if located within Zone AE, A, AO, or X (Future), are exempt from the elevation/floodproofing certification requirements specified in items 1 and 2 above:
 - 1. Recreational Vehicles meeting requirements of recreational vehicles in paragraph 8.4.3, Standards;
 - 2. Temporary Structures meeting the temporary structure requirements of paragraph 8.4.3, Standards; and
 - 3. Accessory Structures less than 150 square feet meeting accessory structure requirements of paragraph 8.4.3, Standards.

Sec. 3.22 Limited Agriculture Permit (City Only)

3.22.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow.

3.22.2 Application Requirements

A limited agriculture permit application shall be submitted in accordance with paragraph 3.2.4, Application Requirements.

- A.** The application shall be signed by the owner of the subject property, and such signature shall be notarized.
- B.** The applicant shall provide notice of the permit application to, and seek consent from, each owner of adjacent property using a notice and consent form provided by the Planning Director or designee. A completed form shall be sent by certified mail to each owner, and a copy of such form shall be sent by first class mail to the resident of the property, if different. A copy of the relevant sections of this Ordinance shall be sent with each form or copy.
- C.** Failure of any adjacent property owner to respond within 30 days of the mailing date shall be deemed consent by such property owner.
- D.** The applicant shall submit a copy of each mailed notice and consent form with proof of mailing along with any returned forms to the Planning Director or designee 30 days or later from the last mailing date, or may submit them earlier if all forms sent have been returned.
- E.** If any property owner denies consent, the Planning Director or designee shall conduct an informal administrative review with the applicant and non-consenting property owner to determine whether issuance of a permit would likely result in an ordinance violation or otherwise create a nuisance or detriment to public health or safety or cause significant hardship or injury due to site conditions or personal considerations. The Planning Director or designee shall notify the applicant and non-consenting property owner(s) of the date, time, and location of the review by First Class Mail, mailed at least two weeks in advance, and request that each attend, submit a written statement, or appear by telephone. Failure of any non-consenting property owner to attend, submit a written statement, or appear by telephone shall be deemed a change to consent by such property owner. Following the administrative review, the Planning Director or designee shall set forth in writing the determination and shall furnish a copy thereof to any person requesting the same. The permit shall be denied if the Planning Director or designee determines that issuance would likely cause a result identified above.

3.22.3 Action by the Planning Director

Upon review of the application and subject to the requirements of paragraph 3.22.2, Application Requirements, the Planning Director or designee shall approve the limited agriculture permit provided the limited agriculture meets all requirements of this Ordinance, except that misrepresentation including forgery by an applicant shall result in permit denial.

3.22.4 Expiration and Revocation

- A.** A limited agriculture permit shall expire if the use is not inspected for compliance within 180 days from the date of issuance.
- B.** The limited agriculture permit shall be revoked if the limited agriculture is found to be in violation of the requirements of this Ordinance, and as otherwise stated in paragraph 5.4.12, Limited Agriculture.

3.22.5 Appeal

Final action on a limited agriculture permit can be appealed in accordance with Sec. 3.15, Appeal of Administrative Decision.

Sec. 3.23 Architectural Review

3.23.1 Applicability

The review procedures described below apply to changes to building elevations where compliance with architectural standards is required, but no site plan approval or certificate of appropriateness is otherwise required. The requirements of paragraph 3.23.2B below also apply where architectural drawings are required for site plan approval.

3.23.2 Application Requirements

- A.** An architectural review application shall be submitted in accordance with paragraph 3.2.4, Application Requirements. Architectural review application documents shall contain, at a minimum, the information listed below unless expressly exempted by another provision of this Ordinance or if the Planning Director or designee makes the determination that less detailed information is required for adequate review. No processing or review of an architectural review application will proceed without the required information.
- B. General Requirements**
 - 1. Title Block - Name of project, type of review labeled: Architectural Review; submittal and revision dates; sheet size 36" x 48" maximum with index map and match lines if multiple sheets are required; graphic scale (not smaller than one inch to 32 feet on a standard architectural scale); property identification number.
 - 2. Name, address and telephone number of owner, applicant and agent; name, address and telephone number of architect or other designer.
 - 3. Elevations of all building facades, to scale, and labeled with materials, colors, finished floor elevations, glazing calculations, and other details as necessary to demonstrate compliance with applicable standards.

3.23.3 Action by the Planning Director

Upon review of the application and subject to the requirements of paragraph 3.23.2, Application Requirements, the Planning Director or designee shall approve the architectural review application provided the design meets all applicable requirements of this Ordinance. An architectural review approval shall expire after four years unless a building permit or other development permit has been issued and remains continuously valid or if work not requiring a permit has been initiated, except that an architectural review application that proposes amending an approved site plan shall be considered a site plan amendment under paragraph 3.7.3C, Site Plan Amendments, and its approval shall expire at the same time as the approved site plan as amended.

Sec. 3.24 Reasonable Accommodation

3.24.1 Purpose

This section provides a procedure for making requests for reasonable accommodation to land use and zoning regulations, policies, practices, and procedures of the City and County of Durham to comply fully with the intent and purpose of federal laws.

3.24.2 Applicability

- A.** This section shall apply to those persons who are defined as disabled or handicapped under federal law. A person recovering from substance abuse is considered a person with a disability or handicap; however, a person who is currently engaging in the illegal use of controlled substances is not.
- B.** A request for a reasonable accommodation may be made by any person with a disability or handicap, his or her legal representative, or a provider of housing for persons with disabilities or handicaps in the city's and county's land use and zoning regulations, when the application of such may act as a barrier to affording such person(s) equal opportunity to use and enjoy a dwelling in accordance with the law.
- C.** A request for a reasonable accommodation may include a modification or exception to the rules, standards, and/or practices for the siting, development, and use of housing or housing-related facilities in this ordinance, that would eliminate regulatory barriers and provide a person with a disability or handicap an equal opportunity to a dwelling of his or her choice.
- D.** Nothing in this section requires persons with disabilities or handicaps, or operators of family care homes, or group homes for persons with disabilities, or handicaps acting or operating in accordance with applicable zoning, licensing or land use laws or practices, to seek reasonable accommodation under this section.

3.24.3 Other Regulatory Obligations

A reasonable accommodation shall not affect an individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.

3.24.4 Pre-Application Conference

If an individual needs assistance in making the request for reasonable accommodation, the Planning Department will provide assistance to ensure that the process is accessible. Applicants seeking reasonable accommodation may request a pre-application conference with the Planning Director or designee to discuss the procedures, standards, and regulations applicable for submittal of an application. Such requests shall be made at least 10 days prior to the date of submittal.

3.24.5 Application Requirements

- A. An application for reasonable accommodation shall be submitted in accordance with paragraph 3.2.4, Application Requirements. In addition, the following information shall be provided by the applicant:
 - 1. The current actual use of the property;
 - 2. The basis for the claim that the applicant is considered disabled or handicapped under federal law;
 - 3. The UDO provision(s) or regulation(s) from which reasonable accommodation is being requested; and
 - 4. An explanation of why the reasonable accommodation is necessary to make the specific property available for the individual.
- B. An application for a reasonable accommodation under this section shall be submitted to the Planning Director or designee.

3.24.6 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give notice as set forth in paragraph 3.2.5, Notice and Public Hearings.

3.24.7 Burden of Proof

The applicant seeking reasonable accommodation shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to make the findings set forth below, as well as the burden of persuasion on those issues.

3.24.8 Action by the Planning Director

The Planning Director or designee shall provide the Board of Adjustment with a copy of the application and all relevant materials pertaining to the request prior to the public hearing.

3.24.9 Action by the Board of Adjustment

- A. Each decision shall be accompanied by a written finding of facts by the Board of Adjustment which specifies the reasons for the decision; and
- B. The Board of Adjustment may prescribe whether the reasonable accommodation is granted to the applicant or shall be allowed to pass with transfer of property.
- C. The Board of Adjustment may approve the request, deny the request, or continue the request. In approving the request, the Board of Adjustment may prescribe reasonable and appropriate conditions provided that the conditions are reasonably related to the request.

3.24.10 Findings

- A.** In granting a reasonable accommodation request, the Board of Adjustment shall find based on competent, material, and substantial evidence, that the proposed accommodation:
 - 1.** Will be used by an individual or individuals with a disability or handicap protected under federal law;
 - 2.** Is "reasonable." An accommodation is reasonable if it will not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the city or county and/or constitute a substantial or fundamental alteration of the ordinance provisions; and
 - 3.** Is "necessary." An accommodation is necessary if it will provide direct or meaningful therapeutic amelioration of the effects of the particular disability or handicap, and it will afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the city or county.
- B.** The Board of Adjustment shall issue a written order on a request for reasonable accommodation within 60 days of the date of the quasi-judicial decision.

3.24.11 Appeal

Appeal from final action by the Board of Adjustment on a reasonable accommodation request can be taken by filing a petition in the nature of certiorari with the Durham County Superior Court.

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Article 4 | Zoning Districts

Sec. 4.1 General

4.1.1 Establishment of Districts

- A. The following zoning districts are hereby established, and are intended to implement the Comprehensive Plan. Each district is only appropriate in development tiers where it effectively implements the plan, as set forth below.

		Development Tier					Former Districts
Symbol	District	Rural	Suburban	Urban	Compact Neighborhood	Downtown	
Residential Districts							
RR	Residential Rural	✓	✓				RD
RS-20	Residential Suburban – 20	✓ ¹	✓				R-20
RS-10	Residential Suburban – 10		✓				R-10, R-15
RS-8	Residential Suburban – 8		✓				R-8
RS-M	Residential Suburban Multifamily		✓				RM-8, RM-12, RM-16
RU-5	Residential Urban – 5			✓	✓ ³		R-5
RU-5(2)	Residential Urban – 5 (2) (duplexes allowed)			✓	✓ ³		R-3
RU-M	Residential Urban Multifamily			✓	✓ ³		RM-16, RM-20
RC	Residential Compact		✓ ²		✓		ITOD-CN, RM-CN
Nonresidential Districts							
CI	Commercial Infill			✓	✓		--NEW--
CN	Commercial Neighborhood	✓	✓	✓	✓		NC
OI	Office and Institutional	✓	✓	✓	✓		O&I-1, O&I-2
CG	Commercial General	✓	✓	✓	✓		GC
SRP	Science Research Park		✓				RSCH, RAD
SRP-C	Science Research Park-Center		✓				--NEW--(County Only)
IL	Industrial Light		✓	✓	✓		I-2, CT
I	Industrial	✓	✓	✓			I-3
Planned Districts							
PDR	Planned Development Residential		✓	✓			PDR
UC	University and College		✓	✓	✓		UC
UC-2	University and College-2			✓			--NEW--
CC	Commercial Center		✓	✓			SC
IP	Industrial Park		✓	✓			I-1
MU	Mixed Use		✓	✓	✓		MU
Design Districts							
CD-C	Compact Design - Core				✓		--NEW--
CD-S1	Compact Design – Support 1				✓		--NEW--
CD-S2	Compact Design - Support 2				✓		--NEW--
CD-P	Compact Design – Pedestrian Business				✓		--NEW--
DD-C	Downtown Design - Core					✓	--NEW--

		Development Tier					Former Districts
Symbol	District	Rural	Suburban	Urban	Compact Neighborhood	Downtown	
DD-S1	Downtown Design - Support 1					✓	--NEW--
DD-S2	Downtown Design - Support 2					✓	--NEW--
Overlays							
-P	Neighborhood Protection Overlay	✓	✓	✓	✓		P
-TO	Transitional Office Overlay		✓	✓			TO
-A60 -A65	Airport Overlay	✓	✓				60 to 65 LDN Above 65 LDN
-MTC	Major Transportation Corridor Overlay	✓	✓	✓	✓		MTC, I-540
-H	Historic Districts & Landmarks Overlay	✓	✓	✓	✓	✓	Historic District Overlay
M/LR-A, -B	Watershed Protection Overlays Lake Michie/Little River District	✓	✓				M/LR-A, -B
F/J-A, -B	Falls/Jordan District	✓	✓	✓			F/J-A, -B
E-A, -B	Eno River District	✓	✓	✓			E-A, -B

¹ Within Rural Villages as designated in the Comprehensive Plan only

² Within Suburban Transit Areas as designated in the Comprehensive Plan only, using Support Area standards as defined in Sec. 6.5, Residential Compact (RC) Development Intensity.

³ Applying the infill standards of Sec. 6.8, Infill Development in Residential Districts, only.

Commentary: Downtown Design District Core, Support 1, and Support 2 are the only districts allowed in the Downtown Tier. Therefore the Downtown Tier boundary and the Downtown Design District boundary are the same.

- B. All development plans approved as part of a rezoning action shall continue in force, except as may be modified in the future under the provisions of paragraph 3.5.12, Deviations from Approved Development Plans.

4.1.2 Development Tier Map

- A. The Development Tier Map is intended to ensure that development reflects the character of the area within which it occurs and to minimize the cost of extending infrastructure into areas inappropriately. The tiers shown on the map shall function as overlays, establishing guidelines within which different development patterns, intensities, and densities shall be utilized. The development tiers shall include the following:
1. The Rural Tier – That area of Durham that lies outside the Suburban Tier and largely within watershed critical areas within which development should maintain a rural focus to encourage preservation of agriculture and protect important water resources. Development within this area should feature large lots to minimize demands on infrastructure, with limited commercial areas.
 2. The Suburban Tier – That area not included within the Downtown, Compact, Urban, or Rural Tiers in which urban services are expected to be provided with development at traditional suburban densities and patterns. This area is anticipated to absorb the majority of Durham’s population growth and its attendant demands for housing,

employment, and goods and services, including opportunities for affordable housing and recreation.

3. The Urban Tier – That area surrounding the historic downtown of the City within which development was concentrated prior to the 1960s. Within this area, development should maintain an urban form with small lot sizes and differing uses in proximity to one another.
 4. The Compact Neighborhood Tier – That area near planned transit stations, within which development is intended to be transit-, bicycle- and pedestrian-oriented to enhance the street level experience and provide a mixture of goods and services. Auto-oriented and low intensity uses shall be discouraged.
 5. The Downtown Tier – That area covered by the Downtown Master Plan within which development is intended to be transit- and pedestrian-oriented in order to enhance the street level experience and provide a mixture of goods and services near transit. Auto-oriented and low intensity uses are discouraged.
- B. The location and boundaries of the development tiers described throughout this Ordinance shall be as shown on the geographic coverage layer entitled "Tiers" that is maintained as part of the City's and County's geographic information systems (GIS) under the direction of the Planning Director, or designee. This depiction of tier boundaries shall constitute the Development Tier Map for the City's and County's jurisdiction and is adopted into this Ordinance by reference. The City or County Clerk, as appropriate, may, upon validation by the Planning Director, or designee, certify a paper copy of the Development Tier Map, or portions of the map, as a true and accurate copy of the Development Tier Map, or a portion thereof.
- C. The Planning Director or designee shall revise the Development Tier Map when amendments are passed by the governing body in accordance with Sec. 3.4, Comprehensive Plan Adoption/Amendment. Such revisions shall be made as soon as possible after the effective date of the amendment but in no event later than five days after the effective date.
- D. No unauthorized person may alter or modify the Development Tier Map. The Planning Director, or designee, shall correct errors in the map as they are discovered.
- E. The Planning Director, or designee, shall revise the Development Tier Map, if necessary, following an interpretation of a Boundary Watershed Critical Area pursuant to paragraph 4.11.3, Rules for Interpretation of Overlay Boundaries, or an interpretation of zoning district boundaries pursuant to 4.1.4, Rules for Interpretation of District Boundaries.
- F. The Planning Director, or designee, may authorize printed copies of the Development Tier Map to be produced and shall maintain digital or printed copies of superseded copies of the map for historical reference.

4.1.3 Official Zoning Map

- A. The location and boundaries of zoning districts shall be as shown on a geographic coverage layer entitled "Zoning" that is maintained as part of the City's and County's geographic information system (GIS) under the direction of the Planning Director, or designee. This depiction of zoning boundaries as shown on the GIS system shall constitute the Official Zoning Map for the City's and the County's zoning jurisdiction, and is adopted into this Ordinance by reference. The City or County Clerk, as applicable, may upon validation by the

Planning Director, or designee, certify a paper copy of the Official Zoning Map, or portions of the map, as a true and accurate copy of the Official Zoning Map, or a portion thereof, under the authority of GS 160A-79(b) and GS 153A-50.

- B. The Planning Director, or designee, shall revise the Official Zoning Map when amendments are passed by the governing body in accordance with Sec. 3.5, Zoning Map Change. The Planning Director, or designee, shall correct errors in the map as they are discovered.
- C. No unauthorized person may alter or modify the Official Zoning Map. Errors in the Official Zoning Map shall be corrected as they are discovered, and the corrected information shown on the GIS system.
- D. The Planning Director, or designee, may authorize printed copies of the Official Zoning Map to be produced, and shall maintain digital or printed copies of superseded versions of the Official Zoning Map for historical reference.

4.1.4 Rules for Interpretation of District Boundaries

- A. The Planning Director, or designee, may authorize periodic changes to the boundaries of the Official Zoning Map in conformance with this section.
 - 1. Interpretations of zone boundaries, except for watershed overlay boundaries, may be appealed to the Board of Adjustment.
 - 2. Interpretations regarding watershed overlay boundaries shall be performed pursuant to paragraph 4.11.3, Rules for Interpretation of Overlay Boundaries.
- B. **Boundaries That Follow Lot Lines**
 - 1. A boundary shown on the Official Zoning Map as following a lot line or parcel boundary shall be construed as following the lot line or parcel boundary as it actually existed at the time the zoning boundary was established, as shown on maps submitted or used when the boundary was established.
 - 2. If, subsequent to the establishment of the zoning boundary, a property line adjustment is made based upon a court ruling, the zoning boundary shall be construed to move with the lot line or parcel boundary if the adjustment is less than 10 feet.
- C. **Boundaries That Do Not Follow Lot Lines**
 - 1. Where the ordinance establishing a zoning boundary identifies the boundary as following a particular natural feature such as a ridgeline, contour line, a river, stream, lake or other water course, or reflects a clear intent that the boundary follow the feature, the boundary shall be construed as following that feature as it actually exists. If, subsequent to the establishment of the boundary, such natural feature should move as a result of natural processes (slippage, subsidence, erosion, flooding, sedimentation, etc.), the boundary shall be construed as moving with the natural feature.
 - 2. A boundary shown on the Official Zoning Map as approximately following a street or railroad line shall be construed as following the centerline of the street or railroad right-of-way. If, subsequent to the establishment of the boundary, the centerline of the street or railroad right-of-way should be moved as a result of its widening or a minor realignment (such as at an intersection), the boundary shall be construed with moving with the centerline only if the centerline is moved no more than 25 feet.

3. A boundary shown on the Official Zoning Map as approximately parallel to, or as an apparent extension of, a feature described above shall be construed as being actually parallel to, or an extension of, the feature.
4. If a zoning boundary splits an existing lot or parcel, the metes and bounds description, if one was submitted at the time the zoning boundary was established, shall be used to establish the boundary.
5. If the specific location of the boundary cannot be determined from application of the above rules to the Official Zoning Map, it shall be determined by scaling the mapped boundary's distance from other features shown on the map.

Sec. 4.2 Residential District Intent Statements

4.2.1 Residential Rural District (RR)

The RR District is established to provide for agricultural activities and residential development on lots of one acre or greater and in conservation subdivisions. Commercial and industrial development is generally prohibited.

This district is used to implement the Comprehensive Plan within those areas shown as the Rural Tier. Lands within other Tiers that have existing RR zoning are acknowledged; however, such lands may be rezoned to more intensive zoning districts consistent with the Comprehensive Plan. The regulations of this district are designed to discourage the development of urban services and to encourage the maintenance of an open and rural character.

Development guidelines for this district may be found in Sec. 6.2, Residential Rural (RR) Development Intensity.

4.2.2 Residential Suburban Districts (RS-20, RS-10, RS-8, RS-M)

The RS Districts are established to provide for orderly suburban residential development and redevelopment. A limited number of nonresidential uses are allowed, subject to the restrictions necessary to preserve the character of the suburban neighborhood. Multifamily development is permitted in areas designated RS-M, which should have convenient access to arterial streets and nearby civic, commercial or employment uses.

The RS Districts are used to implement the Comprehensive Plan within those areas shown as the Suburban Tier and within Rural Villages (as designated in the Comprehensive Plan) within the Rural Tier.

Development guidelines for these districts may be found in Sec. 6.3, Residential Suburban (RS) Development Intensity.

4.2.3 Residential Urban Districts (RU-5, RU-5(2), RU-M)

The RU Districts are established to provide for orderly urban residential development and redevelopment. A limited number of nonresidential uses are allowed, subject to the restrictions necessary to preserve the character of the urban neighborhood. Such uses should have convenient access to arterial streets and nearby civic, commercial or employment uses.

The RU Districts are used to implement the Comprehensive Plan within those areas shown as the Urban Tier.

Development guidelines for these districts may be found in Sec. 6.4, Residential Urban (RU) Development Intensity.

4.2.4 Residential Compact District (RC)

The RC District is established to promote well-integrated new residential and civic development close to designated and future regional transit stations. The district is intended to ensure that new development takes advantage of compatible, higher density, transit-friendly design opportunities in close proximity to transit systems. New development in this

district requires both pedestrian orientation and human scale in architecture at the street level.

The RC District is used to implement the Comprehensive Plan within those areas shown as the Compact Neighborhood tier and the Suburban Transit Areas (as designated in the Comprehensive Plan) within the Suburban Tier.

Development guidelines for this district may be found in Sec. 6.5, Residential Compact (RC) Development Intensity.

Sec. 4.3 Nonresidential District Intent Statements

Development guidelines for all nonresidential districts may be found in Sec. 6.10, Nonresidential District Development Intensity.

4.3.1 Commercial Infill (CI)

The Commercial Infill (CI) District is established to provide for small commercial and mixed use nodes within the Compact Neighborhood and Urban Tiers. These nodes are intended to provide for pedestrian-oriented development that supports the surrounding residential neighborhoods, and have limited vehicular accommodation. The CI District is only appropriate in locations that have direct access to residential neighborhoods. Businesses within the District should be sited to maximize visibility, convenience, and accessibility for pedestrians.

The CI District is used to implement the Comprehensive Plan within those areas shown as the Urban and Compact Neighborhood Tier.

4.3.2 Commercial Neighborhood (CN)

The CN District is established to provide for modest-scale commercial centers (as defined in Article 6) in close proximity to residential areas that offer limited commercial uses to satisfy the needs of the surrounding neighborhood. Compatibility is facilitated through design standards and buffering that provide for walkable, pedestrian-oriented development that complements nearby residential neighborhoods. The district is not intended for use by major or large-scale commercial sales, service or automotive-oriented activities. The CN District is only appropriate in locations that have direct access to residential neighborhoods.

The CN District is used to implement the Comprehensive Plan within those areas shown as the Rural, Suburban, Urban or Compact Neighborhood Tiers.

4.3.3 Office and Institutional (OI)

The OI District is established for employment and community service activities. Some support facilities and residential uses are also allowed when compatible with surrounding uses. The OI district is designed for use on sites that have convenient access to arterials, since development of moderate to high intensity is allowed.

The OI District is used to implement the Comprehensive Plan within those areas shown as part of the Rural, Suburban, Urban, or Compact Neighborhood Tiers.

4.3.4 Commercial General (CG)

The CG District is established to provide for a wide variety of commercial activities of varying scales that are designed to be served by major thoroughfares. It is the intent of this district to provide sufficient size and depth of property to meet business needs, yet maintain safe traffic flows. Businesses in this district should be sited convenient to automotive traffic. Development in the CG District should provide safe pedestrian access to adjacent residential areas.

The CG District is used to implement the Comprehensive Plan within those areas shown as part of the Rural, Suburban, Urban, or Compact Neighborhood Tiers.

4.3.5 Science Research Park (SRP); Science Research Park-Center (SRP-C) (County Only)

The SRP District is established to provide an area for business and scientific research and development, for training, and for production of prototype products, plans or designs in a low-density, open, campus-like setting. The purpose of such production is limited to research, development or evaluation of the merits of those products, plans or designs. The district is intended to accommodate research facilities, pilot plants, prototype production facilities and other manufacturing operations that require the continual or recurrent application of research knowledge and activity as an integral part of the manufacturing process. Offices and support services are allowed.

The SRP District is used to implement the Comprehensive Plan within those areas shown as the Suburban Tier.

(County Only) The SRP-C District is established to allow for the continued growth and development of science research parks which serve as economic drivers for Durham County and the larger region. Development in the SRP-C District shall be designed for a mix of integrated, compatible uses built at moderate-to-high intensities. The concentration of activities in the district shall be supported by access to open space and amenities that encourage biking, transit use, and pedestrian activity. To create architectural variety and visual interest, the intent of the district regulations is to allow for design flexibility.

The SRP-C District is designed for use on sites within science research parks that have access to major thoroughfares and are shown as commercial nodes in the Comprehensive Plan.

The SRP-C District is used to implement the Comprehensive Plan within those areas shown as the Suburban Tier.

4.3.6 Industrial Light (IL)

The IL District is established to provide for a wide range of light manufacturing, warehousing, and wholesaling activities as well as offices and some support services, all subject to minimum design standards intended to ensure such development is compatible with high visibility areas. Standards of this district are designed to minimize impacts on the environment and to assure compatibility with the surrounding area. It is the intent of this district to offer sites for those industries whose operations, exposure, location or traffic have minimal impact on adjacent properties.

The IL District is used to implement the Comprehensive Plan within those areas shown as the Suburban, Urban, or Compact Neighborhood Tiers.

4.3.7 Industrial (I)

The I District is established in order to provide sites for activities which involve major transportation terminals, and manufacturing facilities that have a greater impact on the surrounding area than industries found in the IL District. It is the intent of this district to provide an environment for industries that is unencumbered by nearby residential development.

The I District is used to implement the Comprehensive Plan within those areas shown as the Rural, Suburban or Urban Tiers.

Sec. 4.4 Planned District Intent Statements

Development guidelines for all planned districts may be found in Sec. 6.11, Planned Districts.

4.4.1 Planned Development Residential (PDR)

The PDR District is established to allow for design flexibility in residential development. The district is intended to encourage efficient use of the land and public services and to promote high quality design that will provide a variety of dwelling types as well as adequate support services and open space for the residents of the development. The district regulations are intended to allow innovative development that is integrated with proposed adjacent uses and compatible with existing patterns of development.

The PDR District is used to implement the Comprehensive Plan within those areas shown as the Suburban or Urban Tiers.

4.4.2 University and College Districts (UC and UC-2)

The UC Districts are established to allow for growth and development of colleges and universities, while protecting the larger community, nearby neighborhoods, and the environment from impacts accompanying major new development.

Development in the UC Districts shall be designed for a mix of integrated university-related, uses, linked by pedestrian ways, bikeways, and other transportation systems. Development in these districts shall also encourage reduced auto use, mitigate environmental impacts, conserve energy resources and achieve visual continuity in the siting and scale of buildings.

The UC Districts are used to implement the Comprehensive Plan within those areas shown as part of the Suburban, Urban or Compact Neighborhood Tiers.

4.4.3 Commercial Center (CC)

The CC District is established to provide for orderly development of commercial services in a unified setting on large parcels of land (generally over ten acres in size to serve residential neighborhoods within a three to five mile radius of the site). It is the intent of this district to encourage a concentration of commercial activities surrounding a node such as the intersection of two arterials with an overall design scheme, rather than strip commercial areas. The district is intended to provide a wide range of retail and service activities that serve many neighborhoods. Residential uses generally are not appropriate in the CC District. Development in the CC district should provide safe pedestrian access to adjacent residential areas.

The CC District is designed for use on sites at major intersections that are capable of handling the proposed traffic. The CC District should not be located where primary access is from any connector-level street.

The CC District is used to implement the Comprehensive Plan within those areas shown as part of the Suburban or Urban Tiers.

4.4.4 Industrial Park (IP)

The IP District is established to provide for orderly development of manufacturing, research and support activities in a unified campus-style setting. The district is intended to ensure development that is compatible with adjacent uses. The district provides for a range of uses to be developed with an overall design.

The IP District is used to implement the Comprehensive Plan within those areas shown as part of the Suburban or Urban Tiers.

4.4.5 Mixed Use (MU)

The MU District is established to provide innovative opportunities for an integration of diverse but compatible uses into a single development that is unified by distinguishable design features. In addition to a mixture of compatible uses, development in this district shall provide amenities, walkways and open space to increase pedestrian activity, decrease reliance on individual vehicles, foster transit usage, enhance the attractiveness of Durham City and County, improve the overall quality of life, and provide for the welfare of the citizens.

The MU District is used to implement the Comprehensive Plan within those areas shown as the Suburban, Urban or Compact Neighborhood Tiers.

Sec. 4.5 Design District Intent Statements

Development guidelines for all design districts may be found in Sec. 6.12, Design Districts.

4.5.1 Downtown Design (DD)

The Downtown Design (DD) District is established to encourage intense development and pedestrian activity through regulations appropriate to the downtown area. It focuses on the form of the private and public realm instead of on use and intensity. The standards encourage a vital downtown economy that enhances Durham's position as a commercial, cultural and entertainment hub of the region while increasing livability. The DD district is intended to work in tandem with the Downtown Durham Master Plan and updates. Downtown Design District Core, Support 1, and Support 2 are the only districts allowed in the Downtown Tier. Therefore the Downtown Tier boundary and the Downtown District boundary are the same.

4.5.2 Compact Design (CD)

The Compact Design (CD) District is intended to encourage development of appropriate urban intensity and pedestrian activity by focusing on the form of development and how it shapes the streetscape. The CD District includes the dense core surrounding the future transit station area as well as adjacent areas that provide a transition from the dense core to less intense, surrounding areas.

Sec. 4.6 Neighborhood Protection Overlay (-P)

Commentary: This overlay district would be used to help protect the character of specific neighborhoods. An example might be providing flexibility for infill projects in an older area that has retained its original pattern of development, to ensure maintenance of the existing character of the neighborhood.

4.6.1 Purpose

The purpose of the Neighborhood Protection Overlay is to protect and preserve the established character of existing neighborhoods by limiting the flexibility of underlying base districts in order to more effectively match the density, intensity or established character of an existing area. The overlay may also be used to establish specific design guidelines that are more detailed than the standards of this Ordinance for use during review of development within the overlay.

4.6.2 Establishment of Overlay

- A. A Neighborhood Protection Overlay may only be established as both a zoning map change in accordance with the requirements of Sec. 3.5, Zoning Map Change, to reflect the boundaries of the designated overlay, and a text amendment in accordance with the requirements of Sec. 3.19, Text Amendment, to codify the standards established within the overlay.
- B. Multiple Neighborhood Protection Overlays shall not be designated over any individual property. A property may only be located within one Neighborhood Protection Overlay.
- C. The overlay and any associated standards or guidelines shall reflect the prevalent intensity and consistent building design in the neighborhood, to ensure that new development reflects the identifiable physical character of the area. The standards or guidelines proposed for the overlay shall be included with the original petition for designation as defined in paragraph 4.6.3, Modification of Standards.
- D. The Planning Director, or designee, shall review any proposed overlay and any associated standards or guidelines to determine their conformity with the requirements of this section. As part of this review, the Planning Department shall hold at least one neighborhood meeting to ensure continued neighborhood support for the request prior to initiating the public hearing process.
- E. No review fee shall be required in the establishment of a Neighborhood Protection Overlay.

4.6.3 Modification of Standards

- A. A Neighborhood Protection Overlay may allow for the modification of any of the following standards within this Ordinance:
 - 1. Restrictions to the use regulations in Article 5, Use Regulations (the proposed standards may impose stricter limitations governing uses than allowed by the underlying zoning but shall not permit uses not allowed by the underlying districts);
 - 2. District intensity standards in Article 6, District Intensity Standards;
 - 3. Site design standards in Article 7, Design Standards;
 - 4. Tree protection and tree coverage standards in Article 8, Environmental Protection;

5. Landscaping and buffering standards in Article 9, Landscaping and Buffering; or
 6. Sign standards in Article 11, Sign Standards.
- B. A Neighborhood Protection Overlay may allow for restrictions on building design or placement details, including scale, mass, materials, and architectural style.

Commentary: North Carolina Session Law SL2015-86 limits the ability to place design or aesthetic regulations upon single-family and two-family residential structures.

- C. Any modified standards and regulations applicable within a Neighborhood Protection Overlay shall be expressly set forth in the overlay district at the time of adoption.

4.6.4 Design Guidelines

Where appropriate and allowed by State statute, a Neighborhood Protection Overlay may require the application of specific design guidelines in the review of development. Such guidelines shall be established as part of the overlay district at the time of adoption, and implemented through review and approval of site plans pursuant to Sec. 3.7, Site Plan Review, or architectural review pursuant to Sec. 3.23, Architectural Review.

4.6.5 Tuscaloosa-Lakewood Neighborhood Protection Overlay

A. Purpose

The purpose of this section is to establish additional standards to ensure that new development protects and preserves the established character of the neighborhood as defined on the official zoning map.

B. Applicability

This section shall apply to the boundaries of the Tuscaloosa-Lakewood Neighborhood Protection Overlay as shown on the official Zoning Map.

C. General Standards

1. Landscaping

This section shall apply to construction of any primary structure.

- a. Trees, other than *Pinus* genus, located within required yards shall be retained unless removal is required to accommodate vehicular and pedestrian access or utilities, or the following is demonstrated by a certified arborist;
 - (1) The tree is determined to be unhealthy; or
 - (2) The tree would not survive construction activity.
- b. A minimum of 3% tree coverage, met through preservation, replacement, or a combination thereof per Sec. 8.3, Tree Protection and Tree coverage, is required regardless of the underlying zoning district.
- c. For single-family development, the above requirements are applicable until a Certificate of Compliance has been issued for the residence on an individual single-family lot.

2. Lot Design

No flag lots shall be permitted.

3. Building Height

The maximum height of a new building shall be 35 feet.

D. Single-Family Residential Structures and Duplexes**1. Site Design**

- a. The minimum lot width shall be 50 feet.
- b. Driveways shall have a maximum width of 12 feet within the required street yard and at all points in front of the rear building line of the primary structure.

2. Housing Types

Duplexes shall not be permitted within the RU-5(2) zoning district.

E. Multiple-Family Residential**1. Building Design**

- a. New primary structures shall maintain a single-family detached residential appearance and scale. Residential appearance and scale shall expressly include details from residential uses within the context area as defined in paragraph 6.8.4A, Context Area. Review and approval of elevations and other design details through site plan review pursuant to Sec. 3.7, Site Plan Review, or architectural review pursuant to Sec. 3.23, Architectural Review, as applicable, shall be required prior to the issuance of a building permit or site plan approval as applicable. Such details shall include the following features:
 - (1) Roof type, including extent of eaves and eave ornamentation, if any;
 - (2) Porches or other similar articulation of the front façade, including typical porch details associated with specific architectural styles found in the context area;
 - (3) Façade materials; and
 - (4) Size, pattern, style, and location of windows and doors.
- b. If no more than two primary structures exist within the context area, then the context area for determining the above criteria shall be extended to include the nearest block faces within the neighborhood protection overlay, in all directions, with at least two structures.

2. Housing Types

Multi-family structures shall be limited to multiplexes.

F. Non-Residential Uses and Structures**1. Landscaping**

No buffer reductions permitted per paragraph 9.4.5C, Urban, and Compact Neighborhood Tier Constructed Buffer, shall be permitted.

2. Building Design

- a. Any reconstruction, additions and/or renovations to structures originally designed for residential use but converted to non-residential use, shall maintain a single-family detached residential appearance. Residential appearance shall

expressly include details from residential structures, or former residential structures, within the context area as defined in paragraph 6.8.4A, Context Area. Review and approval of elevations and other design details through site plan review pursuant to Sec. 3.7, Site Plan Review, or architectural review per Sec. 3.23, Architectural Review, as applicable, shall be required prior to the issuance of a building permit or site plan approval as applicable. Such details shall include the following features:

- (1) Roof type, including extent of eaves and eave ornamentation, if any;
 - (2) Porches or other similar articulation of the front façade including typical porch details associated with specific architectural styles found in the context area;
 - (3) Façade materials; and
 - (4) Size, pattern, style, and location of windows and doors.
- b.** If no more than two primary structures exist within the context area, then the context area for determining the above criteria shall be extended to include the nearest block faces within the neighborhood protection overlay, in all directions, with at least two structures.

Sec. 4.7 Transitional Office Overlay (-TO)

4.7.1 Purpose

The Transitional Office Overlay is established to allow an orderly transition of land use from residential use to relatively small-scale office use of lots and parcels fronting major roadways, while maintaining a predominantly residential property appearance and building scale.

4.7.2 Designation of Transitional Office Overlay

- A.** A Transitional Office Overlay may only be established as a zoning map change in accordance with the requirements of Sec. 3.5, Zoning Map Change.
- B.** A Transitional Office Overlay may be established in any residential base district, and may be established over more than one residential base district.

4.7.3 Permitted Uses

- A.** Any use permitted by right, subject to limitations, or through special use permit in the underlying base districts shall be permitted in the overlay.
- B.** The following uses or use categories shall be permitted in addition to the uses permitted in the underlying zoning district. No retail sales shall be permitted as a primary use in the overlay.
 - 1.** Upper-story residential;
 - 2.** Medical facilities (other than hospitals);
 - 3.** Offices;
 - 4.** Animal hospitals, veterinary clinics, animal boarding places (all without outdoor pens or runs);
 - 5.** Artist galleries;
 - 6.** Artist studios; and
 - 7.** Diet houses.

4.7.4 Special Development Standards

- A.** New buildings in the Transitional Office Overlay shall maintain a single-family detached residential appearance and scale. Residential appearance and scale shall expressly include details from residential uses within 150 feet of the overlay area. Such details may include the following features:
 - 1.** Roof type, including extent of eaves, if any;
 - 2.** Porches or other similar articulation of the front façade;
 - 3.** Size, pattern and location of windows and doors; and
 - 4.** Garage or parking location.
- B.** The underlying district dimensional standards shall be met, except where expressly modified in this paragraph.

1. The maximum height of a new building shall be 35 feet.
 2. The maximum length of a new building shall not exceed 80 feet.
 3. The maximum floor area of any nonresidential use in the overlay or aggregation of multiple nonresidential uses in a single building shall be 5,000 square feet.
- C. All nonresidential activity (except that allowed within a residential district) shall occur within a completely enclosed building.
- D. The residential appearance of buildings shall be furthered by the retention of street lawns free of vehicle parking. All off-street parking spaces shall be located no closer to the principal street than the front building line, regardless of any required yard or building setback.

Sec. 4.8 Airport Overlay (-A60, -A65)

4.8.1 Purpose

The Airport Overlay is established to contribute to the safe operation of airports, to facilitate orderly development around airports, and to control and minimize impacts on surrounding activities. It is also the intent of this overlay to encourage land use patterns which are appropriate for the airport vicinity and public safety by avoiding concentrations of population. Standards are provided to ensure an attractive entrance to the area in order to encourage trade and commerce and thereby maintain economic vitality.

4.8.2 Applicability

The Airport Overlay applies to properties in the vicinity of Raleigh-Durham Airport. The specific boundaries are defined on the Official Zoning Map and are imposed on property as an addition to the underlying zoning district. The boundaries generally follow physical boundaries which are identifiable on the landscape and are related to the airport noise contours as determined by the Raleigh-Durham Airport Authority. The Airport Overlay is divided into two suboverlays which are further described below:

A. -A65

Shall be that area found within the 65 Ldn of the Raleigh-Durham Airport and shown on the Official Zoning Map.

B. -A60

Shall be that area located outside the 65 Ldn but within the 60 Ldn of the Raleigh-Durham Airport and shown on the Official Zoning Map.

4.8.3 Permitted Uses and Prohibitions

A. Permitted Uses in -A65

Only the following uses shall be allowed, pursuant to the permissibility of the underlying zoning district in Sec. 5.1, Use Table: Agricultural, Residential, and Utilities (per Public and Civic Uses).

B. Permitted Uses in -A60

All uses in the underlying zoning district shall be permissible pursuant to Sec. 5.1, Use Table, with the exception of outdoor firing ranges.

C. Prohibited Lighting

The lighting types below shall not be permitted:

1. Any moving, pulsating, flashing, rotating, or oscillating light, which may interfere with air traffic other than navigational markings or lights marking potential obstructions in accordance with Federal Aviation Administration requirements.
2. Flood lights, spot lights, or other lighting devices which are not shielded so as to prevent illumination in an upward direction.
3. Any light which constitutes a “misleading light” within the meaning of Federal Aviation Administration regulations.

D. Prohibited Electronic Signals

Any electronic impulse or signal which interferes with communications between aircraft and the airport, or which interferes with established navigation aids shall be prohibited.

E. Prohibited Heights

Structures and signs of a height which obstruct the takeoff and landing of aircraft, as determined by the Federal Aviation Administration, shall be prohibited.

4.8.4 Additional Requirements

- A.** The Raleigh-Durham Airport Authority shall have the opportunity to review applications for a special use permit, variance, zoning map change, subdivision, or site plan approval within the airport overlay prior to a decision by the approving authority. All development shall also comply with the airspace regulations adopted by the Raleigh-Durham Airport Authority. Whenever said airspace regulations impose more stringent requirements or limitations than are required by this Ordinance, the provisions of the airspace regulations shall prevail.
- B.** Residential development within the Airport Overlay shall demonstrate that aircraft noise exposure within the dwellings shall not exceed decibel levels of 45 Ldn and be certified by an acoustical engineer or a board certified member of the Institute of Noise Control Engineering. Measures for reducing noise exposure may include: orientation of structures, design standards, landscaping, or construction materials used in walls, windows, doors, roofs, floors, or ceilings. Design guidelines for noise reduction are available from publications of the Raleigh-Durham Airport Authority.
- C.** Residential development within the Airport Overlay shall ensure that purchasers of the dwellings will be notified that the property may be subject to noise exposure from aircraft using Raleigh-Durham Airport. Measures used to notify purchasers may include notices on plats or deeds.
- D.** Nonconforming uses may be continued subject to the regulations found elsewhere in this Ordinance. However, no building permit shall be issued which would allow a greater hazard (for example: more units, or brighter lighting) to public safety than existed at the time of adoption of this Ordinance.

Sec. 4.9 Major Transportation Corridor Overlay (-MTC)

4.9.1 Purpose

The MTC Overlay is established to enhance the economic and aesthetic appeal and orderly development of properties adjacent to major transportation corridors. Certain arterial streets, parkways and expressways are of critical importance to Durham City and County. Rights-of-way carrying high volumes of traffic are image makers for Durham City and County. They act as entryways for visitors and residents and also serve as an indicator of the quality of life found in the area. Standards are provided to ensure that thoroughfares in this overlay develop with improved traffic efficiency and safety by reducing visual clutter and avoiding inappropriate site design.

4.9.2 Applicability

The MTC Overlay shall apply to all property within 1,250 feet of a designated major thoroughfare, and may extend up to 2,500 feet at intersections. The actual boundaries shall be determined at the time of adoption of the MTC Overlay and shall be shown on the Official Zoning Map. The MTC Overlay shall be measured perpendicular to the edge of:

- A. The right-of-way of the limited access highway; or
- B. The right-of-way for a frontage road, if present.

4.9.3 Buffer Requirements

A. Location of Buffers

A buffer shall be provided along the perimeter of the property line adjacent to the designated major throughfare right-of-way.

B. Buffer Width

1. The buffer width shall be no less than 30 feet and no more than 100 feet. The actual buffer width shall be determined at time of adoption of the overlay. In determining the width of the buffer, the governing body shall consider the following factors:
 - a. The topography of the area;
 - b. The existing and proposed land uses;
 - c. The size of the adjacent parcels;
 - d. The traffic volumes of the corridor; and
 - e. Any additional factors the governing body deems reasonable in carrying out the purpose of the Ordinance.
2. The following buffer widths shall be provided for the following designated major thoroughfares:

MTC Overlay	Buffer Width (Feet)	Segment
I-40	100	Orange County line to Research Triangle Park
I-40	100	Research Triangle Park to Wake County line
I-85	50	Avondale Ave. to US Highway 70
I-85	100	US Highway 70 to Granville County line
I-540	50	Wake County line to Wake County line

C. Permitted Activity in Buffer Area

1. Within the buffer area, existing vegetation shall be maintained in a natural, undisturbed state. In areas where the existing vegetation provides inadequate screening, the property owner or applicant shall install vegetation that meets the opacity standards of paragraph 9.4.4.A, Natural Buffers Required.
2. When necessary, transportation corridors and utility easements may cross the required buffer area. Such crossings shall be designed to minimize clear views through the required buffer. The nature and limits of such intrusions shall be shown in detail on all site plans or subdivision plats associated with the crossing.
3. Trails may not intrude laterally into the buffer for distances greater than 50 feet. Trails shall meander to avoid natural features and to prevent clear views through the buffer. Selective thinning may be allowed; however, no tree over 12 inches in caliper shall be removed for the trail. The maximum trail width shall be ten feet. Trails shall be shown on all site plans and subdivision plats associated with the trail.
4. **Walls or fences**
Except as provided in paragraph 4.9.3D, Adjustments to the Required Buffer, walls or fences shall not be constructed within the buffer area.

D. Adjustments to the Required Buffer

1. Within areas of I-85 MTC Overlay where the required buffer width is identified as 100 feet in paragraph 4.9.3B, Buffer Width, the buffer width can be reduced to 50 feet without a major special use permit if the following conditions are met:
 - a. On properties proposed for residential purposes, with at least 900 feet of uninterrupted frontage along the limited access highway or frontage road, if present, a noise barrier is built to the NCDOT noise policy and to match existing NCDOT noise barriers; and,
 - b. On properties proposed for nonresidential purposes that provide a buffer with 80% opacity as defined in paragraph 9.4.5, Constructed Buffer.
2. The buffer width and amount of landscape materials may be reduced through the issuance of a Major Special Permit pursuant to 3.9, Special Use Permit, considering the following issues in addition to the findings set forth in paragraph 3.9.8, Criteria for Approval of Major and Minor Special Use Permits.

- a. The topography of the area; and
- b. The size of the parcel of record.

4.9.4 Freestanding Signs

Freestanding signs within the MTC Overlay shall not exceed 12 feet in height.

Sec. 4.10 Historic Districts Overlay (-H)

4.10.1 Purpose

Historic District Overlays may be established to protect and preserve areas and landmarks with special significance in terms of prehistorical, historical, architectural or cultural importance, and possesses integrity of design, setting, materials, feeling and association.

4.10.2 Designation

- A. Historic Districts Overlays may be designated by the governing body after the Historic Preservation Commission (HPC) deems and finds that the area is of special significance in terms of its prehistorical, historical, architectural, or cultural importance, and possesses integrity of design, setting, materials, feeling, and association.
- B. Procedures for designation of Historic District Overlays shall be found in Sec. 3.16, Historic or Landmark Designation.

4.10.3 Applicability

All development within a locally designated historic district shall comply with the requirements contained in this section. In addition, all development within a locally designated historic district shall comply with the requirements of any underlying zoning district, except as otherwise required by this ordinance.

4.10.4 Standards

General standards that apply to all Historic District Overlays may be developed; however, each individual overlay may have additional specific standards that apply specifically to one overlay.

4.10.5 Downtown Historic District Overlay

- A. Development in the Downtown Historic District Overlay shall comply with the standards of this subsection, in addition to the standards of the adopted *Downtown Durham Historic Preservation Plan* and the general standards of the Downtown Design District.
- B. In the event of a conflict between applicable standards, the following standards shall take precedence in the order listed below:
 - 1. The *Downtown Durham Historic Preservation Plan*, through approval of an applicable certificate of appropriateness.
 - 2. The standards of this subsection.
 - 3. The standards of the Downtown Design District.
 - 4. All other applicable standards of this Ordinance.
- C. **Build-to Line**

Development in the Historic District Overlay shall conform to established build-to lines. The build-to line requirement shall be:

 - 1. If buildings exist adjacent to the property on either side, the build-to line shall be at or between the two established street facade locations;

2. If an adjacent building exists on only one side of the property, the build-to line shall be within two feet of the existing street facade location; or
3. If no adjacent buildings exist, the corresponding DD sub-district build-to line shall apply.
4. On corner lots, the standards of this section shall apply for each street facade.

D. Building Step-Backs

Building step-backs shall meet the preservation plan requirements through the issuance of a COA and shall be exempt from the height articulation requirements of 6.12.3D.2.

E. Height

1. Maximum height shall be determined by the underlying DD sub-district.
2. The HPC may allow height greater than that of the highest 'pivotal' or 'contributing' structure (as assigned in the Downtown Durham Historic District Preservation Plan) only by making the following additional findings:
 - a. The proposed development allows for adequate light, air and open space access to adjacent properties; and
 - b. Given consideration of the height of structures in the immediate vicinity, the proposed development does not adversely affect the character of the historic district.
3. The HPC may limit height below the maximum allowed in order to find that the proposal is consistent with the Downtown Durham Historic District Preservation Plan.

Sec. 4.11 Watershed Protection Overlay

4.11.1 Purpose

- A. The purpose of the Watershed Protection Overlay is to preserve the quality of the region's drinking water supplies through application of the development standards in Article 8, Environmental Protection. In general, water supply protection will be accomplished by establishing and maintaining low intensity land use and development on land near the region's water supply rivers and reservoirs. Where high density development is desired, water supply protection will be accomplished through the use of engineered stormwater controls. The overall objective is to:
1. Reduce the risk of pollution from stormwater running off of paved and other impervious surfaces; and
 2. Reduce the risk of discharges of hazardous and toxic materials into the natural drainage system tributary to drinking water supplies.
- B. Watershed protection regulations shall be adopted by the City of Durham and Durham County in accordance with the requirements of the North Carolina Environmental Management Commission, Title 15A NCAC 2B .0100, .0200 and .0300, (adopted pursuant to NCGS §143-214.5) and in accordance with NCGS §160A-381 through 383, and NCGS §153A-340 through 342.

4.11.2 Establishment of the Districts

- A. The following six Watershed Overlays shall be established for lands within the watersheds of public drinking water rivers and reservoirs. Each Watershed Overlay is divided into two areas, a Critical Area (A) and a Protected Area (B), based on their distance from the protected water supply and ridge lines that define the drainage basin.

Overlay	Designation	General Location
M/LR-A	Lake Michie/Little River District A	One mile from the 341 foot MSL normal pool of Lake Michie and from the 355 foot MSL normal pool of the Little River Reservoir, or to the ridge lines defining their drainage basins, whichever is less.
M/LR-B	Lake Michie/Little River District B	The portion of the drainage basins of Lake Michie and the Little River Reservoir not covered by M/LR-A.
F/J-A	Falls/Jordan District A	One mile from the 251.5 foot MSL normal pool of Falls Reservoir and from the 216 foot MSL normal pool of the Jordan Reservoir, or to the ridge lines defining their drainage basins, whichever is less.
F/J-B	Falls/Jordan District B	From the edge of F/J-A Overlay to five miles from the normal pool of the Falls Reservoir and the Jordan Reservoir, or to the ridge lines that define their drainage basins, whichever is less.
E-A	Eno River District A	One mile from and draining to the Eno River water intake.
E-B	Eno River District B	From the edge of E-A to 10 miles from the Eno River water intake, or to the ridge lines that define the drainage area of the intake, whichever is less.

- B. The general boundaries of the Watershed Overlays are defined by the distance from the normal pool and ridge line criteria described above, with rights-of-way and property lines used to determine inclusion or exclusion in the Watershed Overlay.

- C. The general boundaries and the parcels included within these boundaries are shown on the map entitled "Watershed Overlays Parcels Map", which is included by reference and adopted as part of this Ordinance.
- D. Where a general boundary crosses a parcel, parcels one-half acre or less shall be excluded from the Overlay, and parcels greater than one-half acre shall be included. Upon adoption of this Ordinance, the parcels included in each Overlay and their Watershed Overlay designation shall be shown on the Official Zoning Map.

4.11.3 Rules for Interpretation of Overlay Boundaries

- A. When a property is divided by one or more of the arcs representing the one half-mile, the one-mile, or the five-mile distance from the reservoir, or by the ridgeline that defines the water supply reservoir, a request can be submitted for an interpretation of the Watershed Overlay boundary through the City-County Planning Department. The request can be submitted by any individual and shall include sufficient information to enable the Planning Director to make a recommendation to the governing body and NC Environmental Management Commission (EMC), as appropriate.
- B. For all requests, the Planning Director will evaluate the request and will seek approval from the appropriate governing body for submission to the NC Environmental Management Commission (EMC). Upon such approval, the Planning Director will submit the proposed Watershed Overlay boundary change to the EMC, in accordance with 15A NCAC 02B .0104(o). Upon approval by the EMC, the Planning Director will complete the interpretation and modify the Watershed Overlay boundary in accordance with the interpretation. All such changes shall be shown on the Official Zoning Map and the Watershed Overlays Parcels Map, which shall be maintained by the Planning Department.

Commentary. The NC Administrative Code, in Rule 15A NCAC 02B .0104(o), states that all revisions (expansions and deletions) to the Environmental Management Commission (EMC) adopted critical and protected area boundaries or to the local government's interpreted critical and protected area boundaries must be approved by the EMC prior to adoption by the local government.

- C. The Planning Director, or designee, shall interpolate the general boundary as shown on the Watershed Overlays Parcels Map, but may vary it to exclude lots of one-half acre or less in a proposed subdivision. In addition, the Planning Director, or designee, may use identifiable physical features, such as roads, streams or easements, as boundaries if they approximately coincide with the interpolated general Overlay boundary. All such changes shall be shown on the Development Tier Map, the Official Zoning Map, and the Watershed Overlays Parcels Map, which shall be maintained by the Planning Department.

4.11.4 Nonresidential Land Use Restrictions

Nonresidential land uses shall be restricted in accordance with the following table and Sec. 8.7, Watershed Protection Overlay Standards.

Overlay	Development Restrictions
M/LR-A	All industrial uses listed in paragraph 5.2.6, Industrial Use Categories, and the sale of fuel for motor vehicles shall be prohibited.
M/LR-B	All Industrial uses listed in paragraph 5.2.6, Industrial Use Categories, shall be prohibited.
F/J-A	<p>Except in the Rural Tier, nonresidential uses shall be prohibited, except that public and civic uses listed in paragraph 5.2.4, Public and Civic Use Categories, commercial uses listed in paragraph 5.2.5, Commercial Use Categories, office uses listed in paragraph 5.2.5J, Office Use Categories, and light industrial uses listed in paragraph 5.2.6A, Light Industrial Service, shall be permitted on land zoned for such uses (see Sec. 5.1, Use Table) as of September 28, 1992, provided that they do not manufacture, distribute or warehouse for distribution nuclear materials or substantial quantities of hazardous materials. Such uses may be permitted to store for on-site use or produce as a waste product nuclear materials or substantial quantities of hazardous materials, subject to the requirements of paragraph 8.7.2G, Hazardous and Nuclear Materials, provided that they maintain a 1000-foot natural vegetated buffer from the normal pool of the reservoir except when located in a special flood hazard area.</p> <p>Land already zoned for one of the above uses may be rezoned to permit one of the above nonresidential uses, except for commercial uses, in accordance with the procedures of Sec. 3.5, Zoning Map Change.</p> <p>Within the Rural Tier, nonresidential uses shall be prohibited except that uses allowed in the CN District may be permitted. The sale of fuel for motor vehicles shall be prohibited.</p>
F/J-B	Municipal solid waste landfill facilities that are constructed and operated in accordance with N.C. Administrative Code Title 15.A.13.B. Sec. 1600 shall be permitted except when located in a special flood hazard area. Within the Rural Tier, commercial uses listed in paragraph 5.2.5, Commercial Use Categories, office uses listed in paragraph 5.2.5J, Office Use Categories and industrial uses listed in paragraph 5.2.6, Industrial Use Categories, that manufacture, distribute, warehouse for distribution, store for on-site use, or produce as a waste product nuclear material or substantial quantities of hazardous materials (except when located in a special flood hazard area) shall be subject to the requirements of Sec. 8.7, Watershed Protection Overlay Standards.
E-A	Industrial uses listed in paragraph 5.2.6, Industrial Use Categories, shall be prohibited. The sale of fuel for motor vehicles shall be prohibited.
E-B	Within the Rural Tier, commercial uses listed in paragraph 5.2.5, Commercial Use Categories, office uses listed in paragraph 5.2.5J, Office Use Categories, and industrial uses listed in paragraph 5.2.6, Industrial Use Categories, that manufacture, distribute, warehouse for distribution, store for on-site use, or produce as a waste product nuclear material or substantial quantities of hazardous materials (except when located in a special flood hazard area) shall be subject to the requirements of Sec. 8.7, Watershed Protection Overlay Standards.

Article 5 | Use Regulations

Sec. 5.1 Use Table

5.1.1 Use Table Key

A. Types of Uses

1. Permitted (P)

A “P” in the use table indicates that a use is allowed by right in the respective district. Such uses are subject to all other applicable requirements of this Ordinance, including restrictions and prohibitions within an approved development plan of record for the property under consideration. They are not subject to the limited use standards found in Sec. 5.3, Limited Use Standards.

2. Permitted Subject to Limitations (L)

An “L” indicates that a use shall be permitted by right, provided that the use meets the additional requirements imposed by the referenced section in the “Notes” column of the table. These could include appropriate limited use standards set forth in Sec. 5.3, Limited Use Standards, and, for residential uses, the intensity standards imposed in Article 6, District Intensity Standards, and/or the design standards imposed in Article 7, Design Standards. Such uses are subject to all other applicable requirements of this ordinance, including restrictions and prohibitions within an approved development plan of record for the property under consideration.

3. Special Use Permit Required (M or m)

An “M” (Major) or “m” (minor) indicates that a use is only allowed where approved as a special exception by the appropriate approving authority in accordance with the procedures set forth in Sec. 3.9, Special Use Permit.

- a. Special uses are subject to all other applicable requirements in this Ordinance, including the additional listed use standards in Sec. 5.3, Limited Use Standards, except where expressly modified by the approving authority as part of the special use approval.
- b. A special use permit shall not be required if an approved development plan exists for the site and the specifications on the development plan comply with paragraph 3.5.6D.10, Uses and Minor/Major Special Use Permits; or the development plan also serves as a site plan or preliminary plat pursuant to paragraph 3.5.6F, Development Plan as Site Plan/Preliminary Plat.

4. Development Plan Required (‡)

A stacked addition symbol (“‡”) indicates that a use is allowed through approval of a development plan submitted in accordance with Sec. 3.5, Zoning Map Change, or if not in conflict with an existing development plan for the property under consideration. For planned districts without a development plan (a zoning designation resulting from translational zoning from previous zoning ordinances), the stacked addition symbol (“‡”) shall be considered Permitted (P).

5. Not Permitted (Blank Cell)

A blank cell in the use table indicates that a use is not allowed in the respective district.

B. Use Categories

Characteristics, principal uses and accessory uses of the various use categories are found in Sec. 5.2, Use Categories.

C. Notes

The “Notes” column on the use table is a cross-reference to the applicable limited use standards in Sec. 5.3, Limited Use Standards, and, for residential uses, the intensity standards in Article 6, District Intensity Standards and the design standards imposed in Article 7, Design Standards.

5.1.2 Use Table

		RESIDENTIAL						NONRESIDENTIAL								PLANNED					DESIGN		NOTES:
USE CATEGORY	SPECIFIC USE	RR	RS	RS-M	RU	RU-M	RC	CI	CN	OI	CG	SRP	SRP-C ³	IL	I	PDR	UC	CC	IP	MU	DD	CD	
AGRICULTURAL USES (City Only)																							
Agriculture	All agriculture, except as listed below	L	L																				5.3.1A
	Apiculture	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Commercial crop production	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	5.3.1A
	Forestry	L	L	L	L	L	L	L	L	L	L	L		L	L	L	L	L	L	L		L	5.3.1B
RESIDENTIAL USES																							
Household Living	Single-family	L	L	L	L	L	L		L							‡				‡	L	L	6.2.1, 6.3.2, 6.4.2, 6.5.2, 6.10.2, 6.11.3, 6.11.7, 6.12, 7.1.2, 7.1.3, 7.1.4, 7.1.5, 7.1.6
	Two-family			L	L	L	L									‡				‡	L	L	6.3.2, 6.4.2, 6.5.2, 6.12, 7.1.7
	Multifamily			L	L	L	L	L	L	L	L		L			‡		‡L		‡	L	L	6.3.2, 6.4.2, 6.5.2, 6.10.2, 6.11.3, 6.11.5, 6.11.7, 6.12, 7.1.8, 7.1.9, 7.1.10
	Family care home	L	L	L	L	L	L		L		L					L‡				L‡		L	5.3.2C, 6.2.1, 6.3.2, 6.4.2, 6.5.2, 6.9.1, 6.10.2, 6.11.3, 6.11.7, 7.1.2
Household Living	Manufactured Home	L																					5.3.2D
	Manufactured home park or subdivision															‡L							5.3.2E
	Upper story residential							L	L	L	L		L			‡		‡L		‡	L	L	6.10.2, 6.11.3, 6.11.5, 6.11.7, 6.12
Group Living	All group living, except as listed below			m	m	m	m	m	m		m					‡m				‡m	m		

		RESIDENTIAL						NONRESIDENTIAL								PLANNED				DESIGN			
USE CATEGORY	SPECIFIC USE	RR	RS	RS-M	RU	RU-M	RC	CI	CN	OI	CG	SRP	SRP-C ³	IL	I	PDR	UC	CC	IP	MU	DD	Ø	NOTES:
	Commercial dorm			L/m		L/m	L/m	L / m	L/m		L/m						‡L				L	L/m	5.3.2A
	Congregate living facility			L/m	L/m	L/m	L/m	L	L	L	L					‡L/m				‡L/m	L	L	5.3.2B
	Group home		L/m	L/m	L/m	L/m	L/m	L	L	L	L					‡L/m				‡L/m	L	L	5.3.2C
	Independent Living Facility			m	m	m	m	P	P	P	P					‡m				‡	P	P	
PUBLIC AND CIVIC USES																							
Community Service	All community service, except as listed below	P	P	P	P	P	P	P	P	P	P		P			‡		‡		‡	P	P	
	Auditoriums									L	L	L	P				‡L	‡L		‡L	P		5.3.3A
	Clubs and lodges	L/m	L/m	L/m	L/m	L/m	L/m	L	L	L	L	L	L	L		‡L/m		‡L	‡L	‡L	L	L	5.3.3C
	Museums	L/m	L/m	L/m	L/m	L/m	L/m	L/m	L/m	L	L	L	L				‡L	‡L		‡L	L	L	5.3.3G
Day Care	Day Care Home	P	P	P	P	P	P	P	P	P	P	P	P	P		‡	‡	‡		‡	P	P	
	Day care facility	L/m	L/m	L/m	L/m	L/m	L/m	L	L	L	L	L	L	L		‡L/m	L	‡L		‡L	L	L	5.3.3E
Educational Facilities	School, Elementary	L/m	L/m	L/m	L/m	L/m	L/m	P	P	P	P	P	P	P		‡L/m	‡	‡	‡	‡	P	P	5.3.3K
	School, middle or high	L/m	L/m	L/m	L/m	L/m	L/m	P	P	P	P	P	P	P		‡L/m	‡	‡	‡	‡	P	P	
	Universities or colleges		M	M	M	M	M	P		P	P	P	P	P		‡M	‡	‡	‡	‡	P	P	
	Vocational, trade or business schools							P		P	P	P	P	P				‡	‡	‡	P	P	
Government Facilities	All government facilities, except has listed below	L/m	L/m	L/m	L/m	L/m	L/m	P	P	P	P	P	P	P	P	‡L/m		‡	‡	‡	P	P	5.3.3F
	Correctional facilities													L/M	L/M			‡L/M	‡L/M		L/M		5.3.3D
Medical Facilities	All medical facilities, except as listed below							P	P	P	P		P	P		‡		‡	‡	‡	P	P	
	Hospitals							P		P	P			P			‡	‡		‡	P	P	
Parks and Open Areas	All parks and open areas, except as listed below	L	L	L	L	L	L	L	L	L	L	L	L	L	L	‡L	‡L	‡L	‡L	‡L	L	L	5.3.3H

		RESIDENTIAL						NONRESIDENTIAL						PLANNED						DESIGN				
USE CATEGORY	SPECIFIC USE	RR	RS	RS-M	RU	RU-M	RC	CI	CN	OI	CG	SRP	SRP-C ³	IL	I	PDR	UC	CC	IP	MU	DD	CD	NOTES:	
	Cemeteries, mausoleums, columbaria, memorial gardens	P	P	P	P	P				P	P			P		‡		‡	‡	‡	L	L	5.3.3B	
Passenger Terminals	All passenger terminals, except as listed below	M									M	L		M	M								5.3.7	
	Rail and Bus terminals				M	M	P		P	P	P	P	P	P			‡	‡	‡	‡	P	L	5.3.3i	
Places of Worship	All places of worship	L/m	L/m	L/m	L/m	L/m	L/m	P	P	P	P			P		‡L/m	‡	‡	‡	‡	P	P	5.3.3J	
Social Service Institutions	All social service institutions										M			M					‡M	M				
Utilities	Major utilities	L/m	L/m	L/m	L/m	L/m	L/m		L/m	L	L	L	L	L	L	‡L/m		‡L	‡L		m	M	5.3.3M	
	Minor utilities	L	L	L	L	L	L	L	L	L	L	L	L	L	L	‡L	‡L	‡L	‡L	‡L	P	P		
	TV/HDTV/AM/FM Broadcast Antennae	L/m										L/m	L/m	L/m	L/m				‡L/m		L/m		5.3.3L	
	Wireless Communication Facility, except as Listed Below	L	L	L	L	L	L	L	L	L	L	L	L	L	L	‡L	‡L	‡L	‡L	‡L	L	L	5.3.3N	
	Unipole Wireless Communication Facility	L/M ¹ /m	L/M ¹ /m						L/M ¹		L/M ¹	L/M ¹	L/M ¹	L/M ¹	L/M ¹	L/M ¹		‡L/M ¹	‡L/M ¹	‡L/M ¹	‡L/M ¹	‡L/M ¹	‡L/M ¹	5.3.3N
	Wireless Communication Facility, Freestanding Concealed	L/M ¹ /m ²	L/M ¹ /m ²	L/M ¹ /m ²	L/M ¹ /m ²	L/M ¹ /m ²	L/M ¹ /m ²	L/M ¹	L/M ¹	L/M ¹	L/M ¹	L/M ¹	L/M ¹	L/M ¹	L/M ¹	‡L/M ¹ /m ²	‡L/M ¹	‡L/M ¹	‡L/M ¹	‡L/M ¹ /	L/M ¹	L/M ¹	5.3.3N	
	Wireless Communication Facility, Freestanding Non-Concealed	L/M ¹ /m	L/M ¹ /m										L/M ¹ /m	L/M ¹ /m	L/M ¹ /m	L/M ¹ /m		L/M ¹ /m	L/M ¹ /m	L/M ¹ /m	L/M ¹ /m	L/M ¹ /m	5.3.3N	

Article 5 | Use Regulations

Sec. 5.1 Use Table

		RESIDENTIAL						NONRESIDENTIAL							PLANNED					DESIGN				
USE CATEGORY	SPECIFIC USE	RR	RS	RS-M	RU	RU-M	RC	CI	CN	OI	CG	SRP	SRP-C ³	IL	I	PDR	UC	CC	IP	MU	DD	OD	NOTES:	
COMMERCIAL USES																								
Indoor Recreation	All indoor recreation, except as listed below							P	P		P		P	P				‡	‡	‡	P	P		
	Adult establishment													L/m	L								5.3.4A	
	Electronic gaming operations										L			L				‡L					5.3.4J	
	Firing range, indoor										L			L	L			‡L					5.3.4K	
	Nightclub or bar							L	L/m		L		L	L				‡L		‡L	L	L	5.3.4P	
Outdoor Recreation	All outdoor recreation, except as listed below	L/m							L/m		L		L	L				‡L		‡	L	L	5.3.4Q	
	Campground, summer camp, RV camp	m																						
	Drive-in theatre										L/m			L/m									5.3.4H	
	Firing range, outdoor, archery, skeet	L/M													L/M								5.3.4L	
	Golf course, country club, swim club, tennis club	L	L	L	L	L					L		L			‡L	‡L		‡L	‡L			5.3.4M	
	Marina, boating facility	M																						
	Paintball	L/m									L/m			L/m									5.3.4R	
	Stadium, arena									M				M			‡			‡M	M			
Overnight Accommodations	Hotel, motel, and extended stay residences							L		L	L		L	L			‡L	‡L	‡L	‡L	L	L	5.3.4N	
	Bed and breakfast	L/m	L/m	L/m	L/m	L/m	L/m	L	L	L	L					‡L/m		‡L		‡L	L	L	5.3.4D	
	Diet house								P	P	P					‡		‡		‡	P	P		
Parking, Commercial	All commercial parking							L		L	L	P	P	L	P			‡		‡L	L	L	5.3.4F	
Restaurants	All restaurants, except as listed below							P	P		P	L	P	P			‡		‡	‡	‡	P	P	5.3.7
	Drive-through facilities								L		L		L	L			‡		‡L	‡L	‡L			5.3.4I

		RESIDENTIAL						NONRESIDENTIAL						PLANNED						DESIGN			
USE CATEGORY	SPECIFIC USE	RR	RS	RS-M	RU	RU-M	RC	CI	CN	OI	CG	SRP	SRP-C ³	IL	I	PDR	UC	CC	IP	MU	DD	CD	NOTES:
Retail Sales and Service	All retail sales and service, except as listed below							P	P		L	L	P	P		‡	L	‡		‡	P	P	5.3.4B; 5.3.7
	Antique shop	L						P	P		P		P	P		‡		‡		‡	P	P	5.3.4C
	Art, music, dance, photographic studio or gallery							P	P	P	P		P	P		‡		‡	‡	‡	P	P	
	Convenience store with gasoline sales								L		L		L	L		‡		‡L		‡L	L	L	5.3.4G
	Drive-through facilities								L		L		L	L		‡		‡L		‡L			5.3.4I
	Payday Lenders							P	P		L			P							P	L	5.3.4S
	Veterinary clinic, animal hospital, kennel	L						L	L	L	L		L	L	L	‡L		‡L	‡L	‡L	L	L	5.3.4W
Self-Service Storage	All self-service storage										L			L	L				‡L	‡L	L		5.3.4T
Vehicle Sales	Manufactured home sales										L			L	L				‡L				5.3.4O
	Vehicle sales, leasing, and rentals										L		L	L	L			‡L	‡L		L		5.3.4U
Vehicle Service	Car wash										L			L	L			‡L	‡L				5.3.4E
	Vehicle service, minor							L	L/m		L			L	L			‡L	‡L	‡L			5.3.4V
	Vehicle service, major													L	L				‡L				5.3.4V
OFFICE																							
Office	All offices, except those listed below							P	P	P	P	P	P	P		‡		‡	‡	‡	P	P	
	Conference center, retreat house	L/m						L		L	L	L	L			‡		‡L	‡L	‡L	L	L	5.3.5A
	Drive-through facilities								L	L	L	L	L	L		‡		‡L	‡L	‡L			5.3.4I

		RESIDENTIAL						NONRESIDENTIAL						PLANNED					DESIGN				
USE CATEGORY	SPECIFIC USE	RR	RS	RS-M	RU	RU-M	RC	CI	CN	OI	CG	SRP	SRP-C ³	IL	I	PDR	UC	CC	IP	MU	DD	CD	NOTES:
INDUSTRIAL USES																							
Heavy Industrial	All heavy industrial, except as listed below														P								
	Asphalt plant														L/M								5.3.6A
	Concrete manufacturing plant														L/M								5.3.6B
	Hazardous and low-level nuclear disposal and storage														L/M								5.3.6C
	Wrecking, junk, and salvage yards													L/m	L								5.3.6I
Light Industrial Service	All light industrial service, except as listed below											L	L	P	P				‡		L		5.3.6D
	Research and development											L	P	P	P				‡		P	L	5.3.6E
Resource Extraction	All resource extraction														L/M								5.3.6F
Warehouse and Freight Movement	All warehouse and freight movement													P	P				‡				
Waste-Related Service	All waste-related services, except as listed below														M								
	Recycling centers													M	M								
	Transfer stations													L	L								5.3.6G
Wholesale Trades	All wholesale trade										m			P	P				‡		L		5.3.6H

¹ If located within 300 feet of a designated North Carolina Scenic Byway.

² To determine which freestanding concealed or unipole facilities require a minor special use permit, see paragraph 5.3.3N.

³ County Only

Sec. 5.2 Use Categories

Commentary: The following use categories are not zoning districts. These categories are intended only to provide a mechanism to group uses for regulatory purposes. The names of some use categories (for example, “Commercial”) may be similar to zoning districts (such as “Commercial, General”). A use listed in the examples below is only permitted by zoning district in accordance with the use table in Sec. 5.1.

5.2.1 In General

A. Approach to Categorizing Uses

1. The use categories found in the use table in Sec. 5.1 , Use Table, are set forth in this section. Specific uses may be further defined in Article 16, Definitions.
2. **Use Determination**
 - a. If a use is not specifically set forth in the use category in this section the Planning Director, or designee, shall determine if the use is similar to a specific use in accordance with this section. Where such similar specific use is subject to limited use standards or special use permit approval, the proposed use shall also be subject to such standards or approval.
 - b. If the Planning Director, or designee, cannot determine a similar specific use, then the Planning Director shall determine the most appropriate use group of the six use groups identified in this section and paragraph 5.1.2, Use Table, (agricultural, residential, public and civic, commercial, office, or industrial) to apply the unspecified use.
 - (1) The same criteria in paragraph 5.2.1C, Use Not Specifically Listed, shall be used except for criteria #14.
 - (2) The unspecified use is allowed with approval of a minor special use permit pursuant to Sec. 3.9, Special Use Permit, in any zoning district where a specific use within that use group is permitted with a “P”.

B. Basis for Classifications

Use categories classify land uses and activities based on common functional, product, or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, likely impact on surrounding properties, and site conditions. The use categories provide a systematic basis for assigning land uses to appropriate zoning districts.

C. Uses Not Specifically Listed

Determination of the appropriate use group and similar specific use shall be made by the Planning Director, or designee, in accordance with the criteria below. The following use information may be supplemented using NAICS codes as promulgated from time-to-time by the U.S. Census Bureau. The criteria below shall be used to determine both the appropriate group and category for a use not specifically listed in the use table or the examples in the use category descriptions, and whether a use is considered principal or accessory.

1. The actual or projected characteristics of the activity in relationship to the stated characteristics of each use category;

2. The relative amount of site area or floor space and equipment devoted to the activity;
3. Relative amounts of sales from each activity;
4. The customer type for each activity;
5. The relative number of employees in each activity;
6. Hours of operation;
7. Building and site arrangement;
8. Types of vehicles used and their parking requirements;
9. The relative number of vehicle trips generated;
10. Signs;
11. How the use is advertised;
12. The anticipated impact on surrounding properties;
13. Whether the activity is likely to be found independent of the other activities on the site; and
14. When considering appropriate districts for a use not listed in the use table, the district intent statements in Article 4, Zoning Districts, shall be taken into consideration.

D. Developments with Multiple Principal Uses

Developments with multiple principal uses shall conform to the following:

1. When all principal uses of a development fall within one Use Category, the entire development shall be assigned to that Use Category;
2. When the principal uses of a development fall within different Use Categories, each principal use shall be classified in the applicable Use Category and each use shall be subject to all applicable regulations for that Use Category.

E. Principal Uses

The “Principal Uses” portion of each use category lists principal uses common to that use category. The names of these sample uses are generic and are based on common meanings, not on what a specific use may call itself.

Commentary: A use that calls itself “Wholesale Warehouse,” but sells mostly to retail consumers, is included in the Retail Sales and Service category rather than the Wholesale Trade category.

F. Accessory Uses

Accessory uses are allowed by right in conjunction with a principal use unless otherwise stated elsewhere in these regulations. Some listed accessory uses can also be considered accessory structures. No accessory use shall be established on a site without a principal use.

G. Uses Not Included

The “Uses Not Included” portion provides cross-references to uses that may appear to be part of a particular category, but that are explicitly handled in a different use category.

5.2.2 Agricultural Use Categories

Characteristics: Characterized by uses that create or preserve areas intended primarily for the raising of animals and crops, and the secondary industries associated with agricultural production.		
Principal Uses	Accessory Uses	Uses Not included
Animal raising including horses, hogs, cows, sheep, goats, and swine, poultry, rabbits, and other small animals, fish hatchery, aquaculture, dairying, personal or commercial animal breeding and development Apiculture Greenhouse or nursery not engaged in retail trade, floriculture, horticulture, pasturage, row and field crops, viticulture, tree or sod farm, silviculture Livestock auction Riding academy or boarding stable	Ancillary indoor storage Animal (including poultry) processing, packing, treating, and storage, provided that these activities are accessory and secondary to normal agricultural activity Associated offices Auction ring Barns, garages, sheds, silos, stables (noncommercial) Home occupations Sales of agricultural products grown or raised on the premises Docks, noncommercial	Animal waste processing (see Waste-Related Service) Commercial feed lots (see Heavy Industrial) Livestock slaughtering (Heavy Industrial) Processing of food and related products (see Heavy Industrial) Solid or liquid waste transfer or composting (see Waste-Related Service) Housing for ranch or farm labor (Household Living) Resource Extraction Limited Agriculture (City Only)

5.2.3 Residential Use Categories

A. Household Living

Characteristics: Residential occupancy of a dwelling unit by a household on a month-to-month or longer basis.		
Principal Uses	Accessory Uses	Uses Not included
Manufactured Home, Class A or B, manufactured home park or subdivision Multiplex, apartment Single-family detached, zero lot line, traditional house, patio house, semi-attached house, duplex, townhouse Upper-story residential Family care home	Accessory dwelling unit, (i.e. granny flats and mother-in-law apartments) Accessory structure Ancillary indoor storage Children's play area or equipment Greenhouse or nursery not engaged in retail trade Home occupation In-house care for six or fewer persons Private community center Private garage, barbecue pit, carport, tool or garden shed, storage unit, swimming pool Docks, noncommercial, Apiculture Limited Agriculture (City Only)	Bed and breakfast establishment, hotel, motel, inn, extended-stay facility (see Overnight Accommodations) Group Home (see Group Living) Independent Living Facility (see Group Living) Congregate Living Facility (see Group Living) Nursing or convalescent house (see Group Living) Residential assisted living facility not having individual dwelling units (see Group Living)

B. Group Living

Characteristics: Residential occupancy of a structure by a group of people that does not meet the definition of Household Living. Tenancy is usually arranged on a monthly or longer basis. Generally, Group Living structures have a common eating area for residents, and the residents may receive care, training, or treatment.		
Principal Uses	Accessory Uses	Uses Not included
Boarding house or orphanage Commercial dorm, fraternity or sorority Congregate Living Facility Group home Hospice, nursing, or convalescent house Independent Living Facility Monastery, convent Retirement center or life care community without individual dwelling units Rooming house	Ancillary indoor storage Associated offices Food preparation and dining facility Recreational facility Staff residence	Alternative or post-incarceration facility (see Social Service Institutions) Age-restricted dwelling units that do not offer services associated with independent living facilities or congregate care facilities (see Household Living) Bed and breakfast establishment, hotel, motel, inn, extended-stay facility (see Overnight Accommodations) Family care home (see Household Living) Membership club or lodge (see Indoor Recreation) Treatment center, transient lodging or shelter for the homeless (see Social Service Institutions)

5.2.4 Public and Civic Use Categories

A. Community Service

Characteristics: Uses of a public, nonprofit, or charitable nature providing ongoing education, training, or counseling to the general public on a regular basis, without a residential component.		
Principal Uses	Accessory Uses	Uses Not included
Auditorium Club or lodge (non-profit) Library Museum Neighborhood arts center or similar community facility (public) Philanthropic institution Senior center Union hall	Accessory residential uses Ancillary indoor storage Associated office Food preparation and dining facility Arts and crafts, day care, therapy area Indoor or outdoor recreation and athletic facility Limited retail sales (internal) Meeting area	Athletic, tennis, swim or health club (see Retail Sales and Service) Church, mosque, synagogue, temple (see Places of Worship) Counseling in an office setting (see Office) Membership clubs and lodges (see Indoor Recreation) Park (see Parks and Open Areas) Private community center (see Household Living: Accessory Use) Soup kitchen (see Social Service Institutions) Treatment center, transient lodging or shelter for the homeless (see Social Service Institutions)

B. Day Care

Characteristics: Uses providing care, protection, and supervision for more than six children or adults on a regular basis away from their primary residence. Care is typically provided to a given individual for fewer than 18 hours each day, although the facility may be open 24 hours each day.		
Principal Uses	Accessory Uses	Uses Not included
Adult day-care program Child care center, nursery school, preschool (see definition of "school, public or private" in Sec. 16.3, Definitions) Latch-key program	Associated office Food preparation and dining facility Health, arts and crafts, and therapy area Indoor or outdoor recreation facility	Counseling in an office setting (see Office) In-house day care for 6 or fewer (see Household Living: Accessory Use) On-site school or facility operated in connection with a business or other principal use where children are cared for while parents or guardians are occupied on the premises (see appropriate category under Accessory Use)

C. Educational Facilities

Characteristics: Public and private (including charter or religious) schools at the primary, elementary, middle, junior high, or high school level that provide basic academic education. Also includes colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree usually in a campus setting.		
Principal Uses	Accessory Uses	Uses Not included
Business, truck driving, vocational, trade and other commercial schools College, community college or university Nursing or medical school not accessory to a hospital Public, private and charter schools Seminary Preschool (see definition of “school, public or private” in Sec. 16.3, Definitions)	Adult continuing education program Ancillary indoor storage Associated office Auditorium, theater Cafeteria or other food service Day care Dormitory Health facility Housing for students or faculty Laboratory, library Maintenance facility Meeting area Play area, recreational or sports facility Support commercial, internal (college-operated bookstore, for example)	Dance, art, music or photographic studio or classroom (see Retail Sales and Service) Driving (see Retail Sales and Service) Martial Arts (see Retail Sales and Service) Day care as a primary use (see Day Care)

D. Government Facilities

Characteristics: Offices, storage, and other facilities for the operation of local, state, or federal government.		
Principal Uses	Accessory Uses	Uses Not included
City, county, state, or federal government office Correctional facilities, jail, prison Emergency services, fire, sheriff or medical station	Ancillary indoor storage Helistop Associated offices Auditorium, meeting room Cafeteria Day care Holding cell, infirmary Limited fueling facility	Educational facility (see Educational Facilities) Maintenance facility (see Light Industrial Service) Parks (see Parks and Open Areas) Solid or liquid waste transfer or composting (see Waste-Related Service) Utilities (see Utilities)

E. Medical Facilities

Characteristics: Uses providing medical or surgical care to patients. Some uses may offer overnight care.		
Principal Uses	Accessory Uses	Uses Not included
Blood plasma donation center Rehabilitation clinic Medical center Medical clinic Medical laboratory Medical office Hospital Day treatment facility	Ancillary indoor storage Helistop Associated office Cafeteria Chapel, ancillary worship space Day care Housing for staff or trainees Laboratory Limited internal support retail Maintenance facility Meeting area Out-patient clinic Pharmacy Recreational facility	Exclusive care and treatment for psychiatric, alcohol, or drug problems, where patients are residents (see Social Service Institutions) Nursing or medical school not accessory to a hospital (see Educational Facilities) Urgent care or emergency medical office (see Retail Sales and Service)

F. Parks and Open Areas

Characteristics: Uses focusing on natural areas consisting mostly of vegetation, passive or active outdoor recreation areas, or community gardens, and having few structures.		
Principal Uses	Accessory Uses	Uses Not included
Botanical garden, nature preserve, recreational trail Cemetery, columbaria, mausoleum, memorial park Game preserve, wildlife management area, refuge, wild animal sanctuary, water conservation area Park Playground Reservoir, control structure, drainage well, water supply water well Zoo	Campground (public park only) Concessions Dock, pier or wharf (noncommercial) Indoor or outdoor recreation facility (public) Maintenance facility Play equipment Research or similar lab facilities Single residential unit for caretaker or security purposes Swimming pool, tennis court, ballfield (public park only)	Campground, private (see Outdoor Recreation) Crematorium (see Light Industrial Service) Firing Ranges (see Indoor or Outdoor Recreation) Golf course, country club (see Outdoor Recreation) Golf driving range, miniature golf facility (see Indoor Recreation) Membership club, lodge (see Indoor Recreation) Park maintained by residents (see Community Service) Water park (see Outdoor Recreation) Water tower, tank, standpipe (see Utilities)

G. Passenger Terminal

Characteristics: Facilities for the takeoff and landing of airplanes and helicopters, and terminals for taxi, rail or bus service.		
Principal Uses	Accessory Uses	Uses Not included
Airport Bus terminal Heliport Rail passenger terminal	Ancillary indoor storage Associated office Concession Freight handling area Fueling facility Limited internal retail Maintenance facility	Park-and-ride facility (see Parking, Commercial) Taxi dispatch center (see Retail Sales and Service)

H. Place of Worship

Characteristics: Places of assembly that provide meeting areas for religious practice.		
Principal Uses	Accessory Uses	Uses Not included
Church, mosque, synagogue, or temple	Ancillary indoor storage Associated office Columbaria, memorial garden Day care Food services, dining area Meeting room/classroom for meetings or classes not held on a daily basis Staff residence located on-site	Athletic, tennis, swim or health club (see Retail Sales and Service) Educational Facility (see Educational Facilities) Neighborhood arts center or similar community facility, public (see Community Service) Private community center (see Household Living: Accessory Use) Revival or gospel tent (see Sec. 5.5, Temporary Uses) Senior center (see Community Service) Social service facility (see Social Service Institution) Treatment center, transient lodging, shelter for the homeless (see Social Service Institutions)

I. Social Service Institutions

Characteristics: Uses that primarily provide treatment of those with psychiatric, alcohol, or drug problems, and transient housing related to social service programs.		
Principal Uses	Accessory Uses	Uses Not included
Alternative or post-incarceration facility, exclusive care and treatment for psychiatric, alcohol, or drug problems, where patients are residents and more than 12 patients are housed Social service facility, soup kitchen, transient lodging or shelter for the homeless	Adult educational facility Ancillary indoor storage Associated office Day care Food services and dining area Meeting room Staff residences located on-site	Cemetery, columbarium, mausoleum, memorial park (see Parks and Open Areas) Congregate care facility with individual units that meet the definition of a dwelling unit (see Household Living) Educational facility (see Educational Facilities) Family care home (see Household Living) Group home (see Group Living) Philanthropic institution (see Community Service) Residential assisted living facility without individual dwelling units (see Group Living)

J. Utilities

Characteristics: Public or private infrastructure serving a limited area with no on-site personnel (Minor Utility) or the general community and possibly having on-site personnel (Major Utility).		
Principal Uses	Accessory Uses	Uses Not included
Major Utilities: Waste treatment plant, water tower or tank, water treatment facility, water reclamation facility, solar array power station Minor Utilities: AM/FM/TV/HDTV broadcast facility Electrical substation Gas meter and regulator stations Telephone exchange, water or wastewater pump station Wireless Communication Facility	Control, monitoring, data or transmission equipment Associated storage	Maintenance yard or building (see Light Industrial Service) Utility office (see Office) TV and radio studio (see Office) Reservoir or water supply (see Parks and Open Areas)

5.2.5 Commercial Use Categories

A. Indoor Recreation

Characteristics: Generally commercial uses, varying in size, providing daily or regularly scheduled entertainment-oriented activities in an indoor setting.		
Principal Uses	Accessory Uses	Uses Not included
Adult establishment Bar, nightclub Bowling alley, game arcade, pool hall, skating rink Gymnastic facility, indoor sports academy Indoor firing range Membership club and lodge Movie or other theater	Ancillary indoor storage Associated office Concessions, indoor or outdoor Food preparation and dining area Pro shop or sales of goods related to the on-site activities of the specific use	Athletic, tennis, swim or health club (see Retail Sales and Service) Outdoor entertainment (see Outdoor Recreation)

B. Outdoor Recreation

Characteristics: Commercial uses, varying in size, providing daily or regularly scheduled recreation or entertainment-oriented activities. Such activities may take place outdoors or within a number of structures.		
Principal Uses	Accessory Uses	Uses Not included
Campground, summer camp, recreational vehicle (RV) park Drive-in theater Firing range such as rifle range, archery range, handgun, or skeet shooting Golf course, country club, swim club, tennis club Marina, boating facility Outdoor entertainment activity such as batting cage, golf driving range, amusement park, miniature golf facility, swimming pool, tennis court or water park Paintball Skateboard or BMX bicycle park Stadium or arena, commercial amphitheater, ballfield	Ancillary indoor storage Associated offices Caretaker or security person housing Classroom Clubhouse Concessions Day care facility Equipment storage Food preparation or dining area Maintenance facility Pro shop or sales of goods related to the on-site activities of the specific use Rain shelter	Athletic, tennis, swim or health club (see Retail Sales and Service) Botanical garden, nature preserve (see Parks and Open Areas) Indoor recreational facility (see Indoor Recreation)

C. Overnight Accommodations

Characteristics: Residential units arranged for short term stays of less than 30 days for rent or lease.		
Principal Uses	Accessory Uses	Uses Not included
Hotel, motel, inn, extended-stay facility, bed and breakfast establishment Diet House Residency or Single Room Occupancy Hotel	Ancillary indoor storage Associated offices Food preparation and dining facility Laundry facility Meeting facility Off-street parking Recyclable material storage (temporary) Swimming pool, other recreational facility	Campground, private (see Outdoor Recreation) Hunting/fishing camp, dude ranch (see Outdoor Recreation) Patient overnight accommodations (see Medical Facilities) Transient lodging, shelter for the homeless (see Social Service Institutions) Recreational vehicle (RV) park (see Outdoor Recreation)

D. Parking, Commercial

Characteristics: Facilities that provide parking not accessory to a specific use for which a fee may or may not be charged.		
Principal Uses	Accessory Uses	Uses Not included
Short- or long-term stand-alone parking facility	Structure intended to shield parking attendants from the weather	Bus barn (see Warehouse and Freight Movement) Sale or servicing of vehicles (see Vehicle Sales and Service)

E. Restaurants

Characteristics: Establishments that prepare and sell food for on- or off-premise consumption.		
Principal Uses	Accessory Uses	Uses Not included
Restaurant, fast-food restaurant pizza delivery facility, drive-in, yogurt or ice cream shop Caterer located in a restaurant	Ancillary indoor storage Associated offices Deck, patio for outdoor seating or dining Drive-through facility Valet parking facility	Bar or tavern (see Indoor Recreation)

F. Retail Sales and Service

Characteristics: Companies or individuals involved in the sale, lease or rental of new or used products, or providing personal services or repair to the general public.		
Principal Uses	Accessory Uses	Uses Not included
<p>Sales-Oriented: Convenience store (with or without gas sales) Drive-through facility Outdoor market Store selling, leasing or renting consumer, house, and business goods including alcoholic beverages, antiques, appliances, art supplies, baked goods, bicycles, books, cameras, carpet and floor coverings, crafts, clothing, computers, dry goods, electronic equipment, fabric, flowers, furniture, garden supplies, gasoline, gifts, groceries, hardware, house improvement, household products, jewelry, medical supplies, musical instruments, pets, pet supplies, pharmaceuticals, photo finishing, picture frames, plants, printed materials, produce, sporting goods, stationery, tobacco and related products, vehicle parts, and videos</p> <p>Personal Service-Oriented: Art, music, dance, or photographic gallery or studio Athletic, tennis, swim or health club Bulk mailing service Caterer not located in a restaurant Drop-in/short-term childcare centers Dry-cleaning or laundry drop-off facility, laundromat Funeral home or mortuary Hair, nail, tanning, massage therapy and personal care service Payday lenders or check cashing services Photocopy, blueprint, and quick-sign service Psychic or medium Security service Tailor, milliner, upholsterer Taxi dispatch center Taxidermist Veterinary clinic, animal hospital or kennel Urgent care or emergency medical office</p> <p>Repair-Oriented: Appliance, bicycle, canvas product, clock, computer, gun, jewelry, musical instrument, office equipment, radio, shoe, television or watch repair Locksmith</p>	<p>Ancillary indoor storage Associated offices Food preparation and dining area Manufacture or repackaging of goods for on-site sale Public recycling drop-off site Residential unit for security purposes (single unit) Storage of goods Car wash at a convenience store with gas sales</p>	<p>Adult videos (see Indoor Recreation) Any use that is potentially dangerous, noxious or offensive to neighboring uses in the district or those who pass on public ways by reason of smoke, odor, noise, glare, fumes, gas, vibration, threat of fire or explosion, emission of particulate matter, interference with radio, television reception, radiation or any other likely cause (see Heavy Industrial) Car wash, except at a convenience store with gas sales (see Vehicle Sales and Service) Crematorium (see Light Industrial) Food service contractor (see Light Industrial Service) Laundry or dry-cleaning plant (see Light Industrial Service) Repair or service of motor vehicles, motorcycles, RVs, boats, and light and medium trucks (see Vehicle Sales and Service) Restaurant (see Restaurants) Sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures (see Wholesale Trade)</p>

G. Self-Service Storage

Characteristics: Facilities providing separate storage areas for personal or business use designed to allow private access by the tenant for storing or removing personal property.		
Principal Uses	Accessory Uses	Uses Not included
Mini-warehouse Multistory enclosed storage facility Storage garage	Associated office Outside storage of boats and campers On-site recycling facility On-site residential unit for security purposes (single unit)	Rental of light or medium trucks (see Vehicle Sales and Service) Storage area used as manufacturing use (see Light Industrial Services) Storage area used for sales, service, and repair operations (see Retail Sales and Service) Transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred (see Warehouse and Freight Movement)

H. Vehicle Sales

Characteristics: Direct sales of passenger vehicles, light and medium trucks, and other consumer motor vehicles such as motorcycles, boats, and recreational vehicles.		
Principal Uses	Accessory Uses	Uses Not included
Manufactured housing sales Vehicle sales, rental, or leasing facilities (including passenger vehicles, motorcycles, trucks, boats, and other recreational vehicles)	Ancillary indoor storage Associated offices Incidental sale of parts Single-bay, automatic car wash Vehicle storage	Convenience store with gasoline sales (see Retail Sales and Service) Retail sale of farm equipment and machinery and earth moving and heavy construction equipment (see Heavy Industrial) Vehicle parts sale as a principal use (see Retail Sales and Service)

I. Vehicle Service

Characteristics: Direct service to passenger vehicles, light and medium trucks, and other consumer motor vehicles such as motorcycles, boats, and recreational vehicles.		
Principal Uses	Accessory Uses	Uses Not included
Car wash Vehicle service, major; including alignment shop, auto body shop, auto paint facility, auto upholstery shop, towing service Vehicle service, minor; including auto detailing, auto repair, battery sales and installation, fuel sales (other than with a convenience store), quick lubrication facilities, tire sales and mounting	Ancillary indoor storage Associated offices Incidental sale of parts Single-bay, automatic car wash Towing Vehicle fueling Vehicle storage	Convenience store with gasoline sales (see Retail Sales and Service) Retail sale of farm equipment and machinery and earth moving and heavy construction equipment (see Heavy Industrial) Vehicle parts sale as a principal use (see Retail Sales and Service) Maintenance yard or facility (see Light Industrial Service)

J. Office Use Categories

Characteristics: Activities conducted in an office setting and focusing on business, professional, or financial services.		
Principal Uses	Accessory Uses	Uses Not included
Advertising office, business management consulting, data processing, financial business such as lender, investment or brokerage house, collection agency, real estate or insurance agent, professional service such as lawyer, accountant, bookkeeper, engineer, architect, sales office, travel agency, business incubator Bank Conference center, retreat Counseling in an office setting TV or radio studio Utility office	Ancillary storage Cafeteria Day care Health facility Helistop Meeting room On-site day care, school or facility where children are cared for while parents or guardians are occupied on the premises Other amenity for the use of on-site employees Internal support retail Restaurants (without drive through)	Contractor or others who perform services off-site, but store equipment and materials or perform fabrication or similar work on-site (see Light Industrial Service) Office/warehouse (see Warehouse and Freight Movement) Research, testing, and development laboratory (see Light Industrial Service) Urgent care or emergency medical office (see Retail Sales and Service)

5.2.6 Industrial Use Categories

A. Light Industrial Service

Characteristics: Firms engaged in the manufacturing, assembly, repair or servicing of industrial, business, or consumer machinery, equipment, products, or by-products mainly by providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.		
Principal Uses	Accessory Uses	Uses Not included
Building, heating, plumbing, or electrical contractor, contractor and others who perform services off-site, but store equipment and materials or perform fabrication or similar work on-site Clothing or textile manufacturing Commercial bakery Crematorium Equipment rental Exterminator Food Service Contrator Janitorial and building maintenance service, Laundry, dry-cleaning, and carpet cleaning plants Maintenance yard or facility Manufacture or assembly of equipment, instruments (including musical instruments), appliances, precision items or electrical items, and toys Microbrewery; micro-distillery Movie production facility Photo-finishing laboratory Printing, publishing, and lithography Production of artwork Repair of scientific or professional instruments, electric motors Sheet metal shop Sign-making Soft drink bottling Storage area used for manufacturing Welding, machine, tool repair shop Woodworking, including cabinet makers and furniture manufacturing,	Accessory medical clinic Ancillary indoor storage Associated office Cafeteria Day care Employee recreational facility On-site repair facility Residential unit for security purposes (single unit)	Brewery Caterer (see Restaurants and Retail Sales and Service) Manufacture and production of goods from composting organic material (see Waste-Related Service) Outdoor storage yard (see Warehousing and Freight Movement) Sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures (see Wholesale Trade)

B. Research and Development

Characteristics: Firms engaged in the fields of research and development. Few customers, especially the general public, come to the site.		
Principal Uses	Accessory Uses	Uses Not included
Research, testing, and development laboratory, pilot plant, prototyping Research-related manufacturing	Accessory medical clinic Ancillary indoor storage Associated office Cafeteria Day care Employee recreational facility Major utilities, such as water towers and electrical substations On-site repair facility Outdoor storage, storage of hazardous and nuclear materials, incinerators, warehousing and employee retail and service facilities Residential unit for security purposes (single unit)	Sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures (see Wholesale Trade) Small-scale catering establishments (see Restaurants)

C. Warehouse and Freight Movement

Characteristics: Firms involved in the storage or movement of goods for themselves or other firms. Goods are delivered to other firms or the final consumer with little on-site sales activity to customers.		
Principal Uses	Accessory Uses	Uses Not included
Bulk storage, including nonflammable liquids, feed and grain storage, cold storage plants, including frozen food lockers, household moving and general freight storage, separate warehouse used by retail store such as furniture or appliance store Bus barn Outdoor storage yard Parcel services Stockpiling of sand, gravel, or other aggregate materials Transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred	Ancillary indoor storage Associated office Cafeteria Daycare Employee recreational facility Outdoor storage yard Residential unit for security purposes (single unit) Truck fleet parking and maintenance area	Bulk storage of flammable liquids (see Heavy Industrial) Mini-warehouse, multi-story enclosed storage facility, storage garages (see Self-Service Storage) Solid or liquid waste transfer or composting (see Waste-Related Service)

D. Waste-Related Service

Characteristics: Characterized by uses that receive solid or liquid wastes from others for transfer to another location and uses that collect sanitary wastes or that manufacture or produce goods or energy from the composting of organic material.		
Principal Uses	Accessory Uses	Uses Not included
Animal waste processing Landfill, incinerator Manufacture and production of goods from composting organic material Recyclable material storage, including construction material Recycling center Transfer station	Ancillary indoor storage Associated office Off-street parking On-site refueling and repair Recycling of material Repackaging and shipment of by-products	Stockpiling of sand, gravel, or other aggregate materials (see Warehouse and Freight Movement)

E. Wholesale Trade

Characteristics: Firms involved in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order-taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited. Products may be picked up on-site or delivered to the customer.

Principal Uses	Accessory Uses	Uses Not included
Mail-order house Sale of building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures Wholesaling of food, clothing, auto parts, and building hardware	Accessory medical clinic Ancillary indoor storage Associated offices Cafeteria Day care Minor fabrication services Product repair Repackaging of goods Residential unit for security purposes (single unit) Warehouse	Store selling, leasing, or renting consumer, house or business goods, wholesale club (see Retail Sales and Service) Warehouse, freight movement (see Warehouse and Freight Movement) Warehouse or wholesale club (see Retail Sales and Service)

F. Heavy Industrial

Characteristics: Firms involved in research and development activities without light fabrication and assembly operations; limited industrial/manufacturing activities. The uses emphasize industrial businesses, and sale of heavier equipment. Factory production and industrial yards are located here. Sales to the general public are limited

Principal Uses	Accessory Uses	Uses Not included
Animal processing, packing, treating, and storage, livestock slaughtering, processing of food and related products, production of chemical, rubber, leather, clay, bone, plastic, stone, or glass materials or products, production or fabrication of metals or metal products including enameling and galvanizing, sawmill Asphalt plant Brewery Concrete manufacturing plant Hazardous or low-level nuclear material disposal Railroad freight yard Sale of farm equipment and machinery and earth moving and heavy construction equipment Wrecking, junk or salvage yard	Associated offices Cafeteria Product repair Repackaging of goods Warehouse, storage	Animal waste processing (see Waste-Related Service) Microbrewery Repair and service of motor vehicles, motorcycles, RVs, boats, and light and medium trucks (see Vehicle Sales and Service) Store selling, leasing, or renting consumer, house, and business goods (see Retail Sales and Service)

G. Resource Extraction

Characteristics: Characterized by uses that extract minerals and other solids and liquids from land

Principal Uses	Accessory Uses	Uses Not included
Drilling for oil or natural gases Extraction of sand, gravel or minerals, borrow pit Quarries	Ancillary indoor storage Associated offices Equipment storage	Solid or liquid waste transfer or composting (see Waste-Related Service) Stockpiling of sand, gravel, or other aggregate materials (See Warehouse and Freight movement)

Sec. 5.3 Limited Use Standards

These standards shall only apply to those districts and uses where the “L” is designated on the use table in Sec. 5.1, Use Table.

5.3.1 Agricultural Use Standards

A. Agricultural Uses (City Only)

Agricultural uses in the City shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following standards:

1. In the RS-20 District, all agricultural uses shall be allowed. In all other RS districts, only apiculture, commercial crop production, and forestry are allowed.
2. For on-site sales as an accessory use pursuant to paragraph 5.2.2, Agricultural Use Categories, no parking spaces associated with the retail sales are required when no permanent structures used for the purpose of sales are proposed.
3. Except in RR and RS-20 districts, aquaponics and aquaculture are prohibited.
4. Sites shall be designed and maintained to prevent fertilizer, compost, soils, and any other materials from spilling and/or draining onto adjacent property, streams, and public or private stormwater collection systems.
5. The sale of compost is prohibited.

B. Forestry (City Only)

Forestry activities in the City shall be conducted in conformance with a Forest Management Plan which uses the current best management practices set out in "Forest Practice Guidelines Related to Water Quality," as adopted by the North Carolina Department of Environmental Quality.

C. Agricultural Uses (County Only)

Agricultural uses in the County shall be permitted in accordance with state statute.

5.3.2 Residential Use Standards

A. Commercial Dorms

Commercial dorms shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The site plan shall include an approved floor plan showing the number of rooms and the proposed number of tenants. The floor plan shall be kept on file with the Inspections Department.

B. Congregate Living Facility

Congregate living facilities shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Residential suites or assisted living units without cooking facilities shall be permitted to be constructed at the same density as the base density for dwelling units with each room or suite considered a dwelling unit.
2. Facilities with the following on-site common use facilities: dining, recreation, health care, a convalescent center, and multifamily units; shall not exceed 1½ times the allowed

multifamily base density of the district, with each unit counted separately, except in the DD District where there is no limit on the multifamily base density.

3. Facilities with the following on-site common use facilities: dining, recreation, health care, and a convalescent center; shall not exceed two times the allowed base density for the district, with each room or suite considered a dwelling unit, except in the DD District where there is no limit on the multifamily base density.
4. Density limits indicated above may be exceeded with approval of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.

C. Family Care Homes and Group Homes

Family care and group home facilities shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Family Care Homes

- a. Family care home facilities shall be separated by a minimum of 1,125 linear feet.
- b. Measurements shall be made as a straight line measurement from the closest point on the property line of each family care home facility.

2. Group Homes

- a. The facility shall meet all State requirements, and all applicable housing and building code requirements.
- b. The facility shall be separated by a minimum 1,125 linear feet from a group home or family care home facility. Measurements shall be made as a straight line measurement from the closest point on the property line of each facility.

D. Manufactured Home

Class A and Class B manufactured homes shall be permitted in accordance with the use table in Sec. 5.1, Use Tables, subject to the following:

1. Class A Manufactured Homes

Class A Manufactured Homes shall meet or exceed the following criteria:

- a. The manufactured home shall have a length not exceeding four times its width, with length measured along the longest axis and width measured at the narrowest part of the other axis.
- b. The manufactured home shall have a minimum of 960 square feet of enclosed and heated living area per dwelling unit.
- c. The pitch of the roof of the manufactured home shall have a minimum vertical rise of 3 feet for each 12 feet of horizontal run and the roof shall be finished with a type of shingle that is commonly used in standard residential construction.
- d. All roof structures shall provide an eave projection of no less than 6 inches, which may include a gutter.
- e. The exterior siding shall consist predominantly of vinyl or aluminum horizontal siding (whose reflectivity does not exceed that of gloss white paint), wood, or

hardboard, comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction.

- f. The manufactured home shall be set up in accordance with the standards set by the North Carolina Department of Insurance. Screening of the foundation area shall be by a continuous, permanent masonry foundation or masonry curtain wall in accordance with NC Building Code and Durham Minimum Housing Code regulations, unbroken except for required ventilation and access, and which shall be installed under the perimeter of the manufactured home.
- g. Stairs, porches, entrance platforms, ramps, and other means of entrance to and exit from the manufactured home shall be installed or constructed in accordance with the standards set by the North Carolina Building Code, freestanding or attached firmly to the primary structure and anchored securely to the ground.
- h. The moving hitch, wheels and axles, and transporting lights shall be removed.

2. Class B Manufactured Homes

Class B Manufactured Homes shall meet or exceed the following criteria:

- a. The manufactured home shall meet requirements of the North Carolina Department of Insurance for installation and tie-downs.
- b. The manufactured home shall be skirted with a durable material that encloses the area between the chassis and the ground. Durable material includes but is not limited to vinyl or masonry.
- c. Stairs, porches, entrance platforms, ramps, and other means of entrance and exit to and from the manufactured home shall be installed or constructed in accordance with the standards set by the North Carolina Building Code, free standing or attached firmly to the primary structure and anchored securely to the ground.
- d. The moving hitch, wheels and axles, and transporting lights shall be removed.

E. Manufactured Home Park or Subdivision

Manufactured Home Parks or Subdivisions shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

- 1. Only Class A or Class B manufactured homes shall be allowed.
- 2. Any manufactured home sites shall be specified on the approved Development Plan and manufactured homes shall be permitted only where they have been expressly indicated on the approved Development Plan.
- 3. Manufactured house subdivisions shall show the orientation of the house to the street in the Development Plans.
- 4. Manufactured homes in parks shall maintain a distance of at least 16 feet between manufactured homes. For the purposes of this section, added on rooms, porches, and other structures attached to the manufactured home shall be considered part of the manufactured home.

5. Supporting uses within a manufactured home park shall maintain a side yard of at least 10 feet.
6. Development Plans for manufactured home parks and subdivisions shall show lot layouts, and pedestrian walkways that connect the house with any support facilities.

5.3.3 Public and Civic Use Standards

A. Auditoriums

Auditoriums shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Auditoriums shall not be located adjacent to residential uses.

B. Cemeteries, Columbaria, and Memorial Gardens

Cemeteries, columbaria, and memorial gardens shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. In the DD District no new cemeteries shall be allowed.
2. Cemeteries shall not exceed 300 graves in size.

C. Club or Lodge (Non-profit)

Non-profit clubs or lodges shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. In Residential and PDR Districts:
 - a. All structures shall be located at least 30 feet from property lines. This distance can be reduced to the yards allowed per Sec. 6.9, Nonresidential and Group Living Development in Residential Districts, if a masonry wall at least six feet high is provided. The wall shall be located outside of the street frontage area and maintain the height limitations pursuant to Sec. 9.9, Fences and Walls.
 - b. Parking located between the structure and the street shall be set back from the right-of-way beyond the minimum or maximum street yard, as applicable.
2. No outdoor public address systems shall be allowed.
3. Clubs and Lodges shall not be permitted in the S2 sub-district of the CD District.

D. Correctional Facility

Correctional facilities shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. In order to accommodate outdoor recreational facilities and to allow for potential building expansion, the site size for facilities located outside the DD District shall be a minimum of one acre in area or the minimum of the zoning district, whichever is larger.
2. Facilities within the DD District have no minimum site area.
3. The facility shall be established at least 650 feet from the nearest property which is residentially zoned or used, except in the DD District where it may be established adjacent to residential uses but shall be a minimum of 650 feet from the DD District boundary.

4. The facility shall not be established within 1,320 feet of a public or private school, day care, or place of worship.
5. Site development shall be in conformance with the landscaping and dimensional requirements of the zoning district.

E. Day Care Facility

Day care facilities shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The facility shall meet all applicable State requirements for standards, licensing and inspections.
2. In residential districts, parking located between the structure and the street shall be set back from the right-of-way beyond the minimum or maximum street yard, as applicable.
3. The facility shall meet the following space requirements if children are the primary clients of the use:

a. Outdoor Play Space

- (1) There shall be 100 square feet of outdoor play space per child including children at the facility for after school care. This outdoor play space can be as little as 75 square feet with an increase in the amount of indoor play space provided on a one-to-one basis. Parking and loading areas shall not be counted toward play spaces.
- (2) All outdoor play space shall be useable for play purposes. As an example, streams, marsh land or other unsuitable areas shall not be credited toward the play space requirement.
- (3) Outdoor play areas shall be fenced in accordance with standards for fences and walls found in Sec. 9.9, Fences and Walls, with a minimum fence height of four feet.
- (4) Outdoor play space located between the structure and the street shall be set back beyond the minimum or maximum street yard, as applicable.

b. Indoor Play Space

There shall be at least 35 heated square feet per child. The heated space shall not include hallways, kitchens, bathrooms, closets, utility rooms, and offices.

F. Government Facilities

Government facilities shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Following the initial approval of government facilities through the special use permit process, expansions of up to 35% of the area originally approved through the special use permit process pursuant to Sec. 3.9, Special Use Permit, may be approved administratively, unless such administrative approval is explicitly prohibited as a condition of the special use permit.
2. Administrative approvals of expansions of government facilities shall not waive any conditions of approval of the special use permit.

3. In residential districts, parking located between the structure and the street shall be set back from the right-of-way beyond the minimum or maximum street yard, as applicable.

G. Museum

Museums shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The site shall have direct access from a street which is adequately sized to accommodate traffic generated by the museum.
2. Museums shall not be permitted in the S2 sub-district of the CD District.
3. In residential districts, parking located between the structure and the street shall be set back from the right-of-way beyond the minimum or maximum street yard, as applicable.

H. Parks and Open Areas

Parks and open areas shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Vehicle Use Area Landscaping Standards

On sites greater than two acres, the shrub requirements of paragraph 9.8.3B.3, Shrubs, and paragraph 9.8.2B, Vehicular Use Areas Visible from Adjacent Property, shall not apply if the vehicle use areas are located 100 feet or more from property lines, and at least 25% of the total site area is left in natural vegetation.

2. Setbacks

- a. For all structures, picnic areas, playgrounds, and unlighted basketball courts and athletic fields:

- (1) Except in Design Districts, a 50-foot setback shall be maintained from property lines adjacent to residentially zoned or used property.
- (2) In Design Districts, a 15-foot setback shall be maintained instead of the required build-to line in paragraphs 6.12.3A.1 and 6.12.4A.1, Building Placement.
- (3) Through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permits, the setback may be reduced to as little as ten feet. In addition to the required findings in paragraph 3.9.8A, General Findings, the applicant shall demonstrate that the proposed design provides for equal or better functionality of the park, focusing on factors including but not limited to, proposed building orientation and location of amenities in relation to neighboring properties, and physical or environmental constraints.
- (4) (County Only) In the SRP-C district, the following shall apply instead of paragraph (1) above: A 15-foot setback shall be maintained from property lines, and may be reduced to ten feet pursuant to paragraph (3) above.

- b. For lighted facilities such as tennis courts, basketball courts, and athletic fields:

- (1) Except in Design Districts, a 100-foot setback shall be maintained from property lines adjacent to residentially zoned or used property.

- (2) In Design Districts, a 30-foot setback shall be maintained instead of the required build-to line in paragraphs 6.12.3A.1 and 6.12.4A.1, Building Placement.
- (3) Through the issuance of a minor special use permit per Sec. 3.9, Special Use Permits, the setback may be reduced with measures used to reduce light and glare onto adjacent residentially zoned or used property. Possible measures include, but are not limited to directional lighting, lower fixture heights, berms, vegetation, and fences. In addition, documentation shall be provided from a registered professional with experience in lighting certifying that the lighting does not exceed 0.5 foot-candle at the property line of adjacent residentially zoned or used properties.
- (4) (County Only) In the SRP-C district, the following shall apply instead of paragraph (1) above: A 30-foot setback shall be maintained from property lines, and may be reduced to ten feet pursuant to paragraph (3) above.

I. Passenger Terminals

Passenger terminals shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Passenger terminals shall not be permitted in the S2 sub-district of the CD District.

J. Places of Worship

Places of worship shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

In residential districts, parking located between the structure and the street shall be set back from the right-of-way beyond the minimum or maximum street yard, as applicable.

K. Schools- Elementary, Middle, or High

Schools shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Use permits for public schools shall not be limited as to number of students. Notwithstanding any conditions on existing use permits, public schools may enroll the number of students that they are legally entitled to enroll under State building codes and other applicable State laws.
2. Following the initial approval of schools through the special use permit process, expansions of up to 20% of the area originally approved through the special use permit process pursuant to Sec. 3.9, Special Use Permit, may be approved administratively.
3. Administrative approvals of expansions of schools shall not waive any conditions of approval of the special use permit.
4. In residential districts, parking located between the structure and the street shall be set back from the right-of-way beyond the minimum or maximum street yard, as applicable.

L. TV/HDTV/AM/FM Broadcast Antennae

Broadcast antenna-supporting structures and/or towers, including replacements, which contain antennae/towers that transmit signals for radio and television communications shall be permitted in accordance with the use table in Sec. 5.1, Use Table. They are subject to the

requirements of Sec. 3.7, Site Plan Review, Sec. 3.9, Special Use Permit, and the following additional requirements:

1. Any antenna-supporting structure, equipment enclosures and ancillary structures shall meet the setback requirements of the underlying zoning district plus an additional six inches for every one foot of antenna support structure height.
2. The entire antenna-supporting structure or tower and all appurtenances shall be designed pursuant to the wind speed design requirements of ASCE 7-95, including any subsequent modification to those specifications.
3. Any facility shall be illuminated only in accordance with any applicable FAA requirements to provide aircraft obstruction lighting. Any such lighting shall not exceed the minimum FAA requirements and shall incorporate the most unobtrusive design allowed (e.g., white flashing lights are prohibited where red lights and painting are allowed).
4. A landscaped buffer shall surround the base of the broadcast antenna equipment compound. Existing trees and shrubs on the site can be used pursuant to Sec. 9.3, Existing Vegetation Credits for Required Landscaping, or paragraph 9.4.4, Natural Buffers, as applicable. Grading shall be limited only to the area necessary for the new broadcast antenna.
 - a. If the proposed broadcast antenna is the principal use of the property then landscaping per Article 9, Landscaping and Buffering, shall be applicable. Additionally a buffer equivalent to that required for an Industrial use adjoining a Residential use shall be provided around the broadcast antenna equipment compound in the RR district; and a buffer equivalent to that required for a Light Industrial use adjoining a Residential use around the broadcast antenna equipment compound in all other districts.
 - b. If the proposed broadcast antenna is to be located in front of an existing structure on the same zone lot, a street buffer shall also be required.
 - c. On sites in residential districts adjoining public rights-of-way an opaque fence consistent with the requirements of Section 9.9 shall surround the broadcast antenna equipment compound.
5. The only signage that shall be permitted upon an antenna-supporting structure/tower, equipment enclosures, or fence (if applicable) shall be informational, and for the purpose of identifying the antenna-supporting structure, (such as ASR registration number) as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable).
6. New antenna-supporting structures/tower shall be configured and located in a manner that minimizes adverse effects including visual impacts on properties within 300 feet or the proposed height of the tower, whichever is greater, of the property under consideration. The applicant shall demonstrate with specific information that alternate locations including existing towers and buildings, configurations, facility types, mass and scale, height, painting, lighting, and materials have been examined and shall justify the proposed alternatives in terms of effects on properties within 300 feet or the proposed height of the tower, whichever is greater, of the property under consideration.

M. Utility Facilities

Utility facilities shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Utility facilities in residential areas or adjoining residential uses shall maintain residential setbacks, be fenced (unless totally enclosed within a structure), and either be screened from view or designed to have a residential appearance.
2. In residential districts, parking located between the structure and the street shall be set back from the right-of-way beyond the minimum or maximum street yard, as applicable.

N. Wireless Communication Facilities for Transmitting and Receiving Electronic Signals (WCFs)

1. The purpose of this section is to:
 - a. Minimize the safety and aesthetic impacts of wireless communication facilities (WCFs) on surrounding areas by establishing standards for location, setbacks, structural integrity, and compatibility;
 - b. Encourage the location and collocation of wireless communication equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts; effects upon the natural environment and wildlife; and to reduce the need for additional antenna-supporting structures;
 - c. Encourage coordination between suppliers of wireless communication services in the City and County of Durham;
 - d. Regulate in accordance with all federal and State law applicable to wireless communication facilities, including the *Telecommunications Act of 1996* and Section 6409(a) of the *Middle Class Tax Relief and Job Creation Act of 2012*; and
 - e. Protect the unique natural beauty and rural character of the City and County while meeting the needs of its citizens to enjoy the benefits of wireless communications services.

2. Exceptions

The following shall not be subject to the requirements of this section;

- a. Satellite earth stations (satellite dishes).
- b. Routine maintenance and/or in-kind replacement on any existing wireless communications facility that does not include the addition of any new antenna elements, feed lines, and/or associated support equipment on the facility or in the equipment compound, or the placement of any new wireless communications facility.
- c. A government-owned wireless communications facility, upon the declaration of a state of emergency by federal, State, or local government, and a written determination of public necessity by the City or County designee; except that such facility must comply with all federal and State requirements. No wireless communications facility shall be exempt from the provisions of this section beyond the duration of the state of emergency.
- d. Antenna-supporting structures, antennas, and/or antenna arrays for AM/FM/TV/HDTV broadcasting transmission facilities that are licensed by the

Federal Communications Commission, unless it qualifies as an eligible facility request.

- e. Temporary mobile communication towers pursuant to Sec. 3.12, Temporary Use Permit, and paragraph 5.5.2H, Mobile Communication Tower.

3. General Requirements

- a. WCFs and associated equipment shall be permitted in accordance with the use table in Section 5.1.
- b. Grading shall be limited only to the area necessary for the new WCF and equipment compound, and access to the facility.
- c. **Structural, Operational, and Insurance Requirements**

Unless otherwise indicated below, the following shall apply to any site plan application.

- (1) Documentation, sealed by a registered professional engineer with WCF expertise, shall be provided indicating that the new WCF, or modification to an existing WCF, complies with the following. Such compliance shall be maintained throughout the life of the WCF.
 - (a) That the American National Standards Institute (ANSI) requirements for the proposed improvements are met; and
 - (b) All applicable building, structural, electrical, and safety codes and with all other laws codifying objective standards reasonably related to health and safety shall be met.
- (2) The owner of a freestanding WCF shall maintain general liability insurance for the WCF in the amount of at least \$1,000,000; and shall, as part of the original site plan application, site plan amendments, and subsequent modifications, provide documentation sufficient to demonstrate compliance with this requirement.
- (3) **Lighting**

Lighting shall not exceed the Federal Aviation Administration (FAA) minimum standard. Any lighting required by the FAA shall be of the minimum intensity and the number of flashes per minute (i.e., the longest duration between flashes) allowed by the FAA. Dual lighting standards shall be required and strobe lighting standards prohibited unless required by the FAA. The lights shall be oriented so as not to project directly onto surrounding residential property, consistent with FAA requirements.
- (4) **Signage**
 - (a) Commercial messages shall not be displayed on any WCF.
 - (b) For freestanding WCFs, a warning sign shall be posted and shall include the contact information of the owner of the WCF.
- (5) **Storage**

- (a) A WCF equipment compound shall not be used for the storage of any excess equipment or hazardous materials, nor be used as habitable space.
 - (b) No outdoor storage yard(s) shall be allowed in a WCF equipment compound.
- (6) Interference

A WCF shall not interfere with City and/or County public safety communications, nor shall it interfere with normal radio and television reception.

 - (a) Documentation shall be provided by an expert in radio frequency interference (RFI) that the proposed WCF, or modification to an existing WCF, will not cause RFI with the City's and/or the County's public safety communications equipment.
 - (b) When a specific WCF is identified as causing radio frequency interference (RFI) with the City's and/or the County's public safety communications equipment, the following steps shall be taken:
 - i. Upon notification by the City and/or County of interference with Public Safety Communications equipment, the owners of the WCF equipment shall utilize the hierarchy and procedures set forth in the Federal Communication Commission's (FCC) Wireless Telecommunications Bureau's Best Practices Guide. If the WCF owner fails to cooperate with the City and/or County in applying the procedures set forth in the Best Practices Guide in order to eliminate the interference, then the City and/or County may take steps to contact the FCC to eliminate the interference.
 - ii. If there is a determination of RFI with the City's and/or the County's public safety communications equipment, the party which caused the interference shall be responsible for reimbursing the City and/or County for all costs associated with ascertaining and resolving the interference, including but not limited to any engineering studies obtained by the City and/or County to determine the source of the interference.
- (7) Service Providers

The current and/or intended service provider(s), as applicable for the application, shall be indicated on the site plan.

4. Standards for Specific Wireless Communication Facilities (WCFs)

a. Collocation – Concealed, Attached

(1) Standards

(a) Height

The top of the WCF shall not be more than 20 feet above the facility to which it is attached.

(b) Setbacks

The facility to which the WCF will be attached shall maintain the normal setbacks of the zone.

(c) Aesthetics

Concealed, attached WCFs, including feed lines and antennas, shall be designed to match the existing structural design and color of the facade, roof, wall, or facility to which it is to be affixed.



(2) Approval

Site plan approval is required pursuant to Sec. 3.7, Site Plan Review.

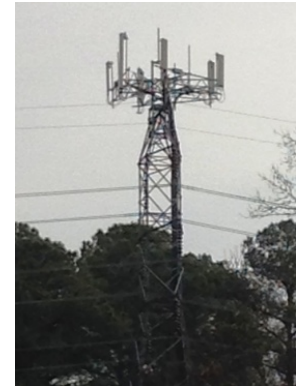
b. Collocation – Non-Concealed, Attached

(1) Standard

Non-concealed, attached WCFs shall only be allowed on transmission towers and light stanchions, with the top of the WCF no more than 20 feet above the facility to which it is attached.

(2) Approval

Site plan approval is required pursuant to Sec. 3.7, Site Plan Review.



c. Collocation on an Existing, Freestanding WCF

(1) Standard

The collocation of additional wireless facilities on existing, freestanding WCFs shall be consistent with the existing concealment method, if applicable, of the freestanding WCF.

(2) Approval

Site plan approval is required pursuant to Sec. 3.7, Site Plan Review.



d. Eligible Facility Request/Substantial Change

“Eligible facility requests” and “substantial changes” to existing WCFs shall be regulated as follows:

- (1) Site plan approval is required pursuant to Sec. 3.7, Site Plan Review.
- (2) For applications that claim “eligible facility request” status for additional height to a freestanding WCF, a fall zone impact analysis shall be provided.
 - (a) The analysis shall include:
 - i. A sealed engineering analysis of the fall zone with the additional height.
 - ii. A sealed survey indicating all primary structures and facilities within the fall zone shall be provided.
 - iii. A list of active building permits with addresses within the fall zone, or a statement that at time of submittal no building permits were issued within the fall zone.
 - (b) The analysis shall demonstrate the additional height does not impact primary structures or facilities if the support structure should fail. If the impact analysis demonstrates there are no existing primary structures or facilities, or none pending with an active building permit, within the fall zone with the additional height, then the application shall be considered an “eligible facility request.” Otherwise, the request shall be considered a substantial change.
- (3) If an application qualifies as an eligible facility request, the modification shall be allowed with an approved site plan demonstrating compliance with applicable setbacks and the requirements within paragraph 5.3.3N.3.c, Structural, Operational, and Insurance Requirements.
- (4) Eligible facility requests can be incremental, but shall not cumulatively result in creating a substantial change to the existing WCF.

Example: If 20 feet is the maximum additional height that can be added to a particular existing tower and maintain “eligible facility request” status then multiple applications to incrementally increase height can be submitted, so long as the cumulative additional height does not exceed the 20-foot addition maximum.

- (5) Measurements for modifications to a WCF in an application that claims an eligible facility request shall be based from the dimensions of the facility as approved prior to February 22, 2012. The measurements for modifications to all WCFs approved on or after February 22, 2012, shall be based from the dimensions of the facility as originally approved and constructed.
- (6) Substantial changes shall be held to all applicable Ordinance requirements.

e. Freestanding, Concealed and Unipole WCF

(1) Standards

(a) Height

i. General

Calculations of height shall include the foundation of the wireless support structure at grade, but exclude lightning rods for the dissipation of lightning, or lights required by the FAA that do not provide support for any antennas.

ii. In the RR District

The maximum height shall be 120 feet.

iii. In PDR and All Residential Districts Other than the RR District

The maximum height shall be limited to 20 feet above the allowable building height of the underlying zoning district.

iv. In All Other Districts Pursuant to Sec. 5.1, Use Table

The maximum height shall be 180 feet.

(b) Setbacks

The following setback requirements are established to mitigate potential safety and aesthetic impacts upon surrounding properties.

i. Setbacks shall be measured from the base of the wireless support structure.

ii. The minimum setback from each property line shall be 120% of the height of the tower, or 85 feet, whichever is greater. Except in PDR and residential districts, a reduction in the minimum setbacks may be approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.

iii. The minimum setback from the centerline of a natural gas line easement for gas lines measuring eight inches in diameter or greater shall be 120% of the height of the tower, or 85 feet, whichever is greater.

(c) Buffers

A project boundary buffer of at least 60% opacity and minimum 10-foot width, pursuant to the requirements of Sec. 9.4, Project Boundary Buffers, shall surround the base of the WCF equipment compound. Existing trees and shrubs on the site can be used pursuant to Sec. 9.3, Existing Vegetation Credits for Required Landscaping, or paragraph 9.4.4, Natural Buffers, as applicable.

(d) Fence/Wall



An eight-foot tall, 100% opaque fence or wall, per the requirements of Section 9.9, Fences and Walls, shall surround the WCF equipment compound.

(e) Required Expansion Capability

- i. Freestanding, concealed and unipole WCFs less than 120 feet in height shall be engineered and constructed to accommodate at least two antenna arrays.
- ii. Freestanding, concealed and unipole WCFs from 120 feet to 150 feet in height shall be engineered and constructed to accommodate at least three antenna arrays.
- iii. Freestanding, concealed and unipole WCFs above 150 feet in height shall be engineered and constructed to accommodate at least four antenna arrays.

(f) Monopines/Faux Trees

A monopine or faux tree WCF shall be considered concealed if the following criteria are met. If the following criteria are not met, then the proposed WCF will be considered non-concealed for regulatory purposes.

- i. The WCF is incorporated within an existing cluster of trees that measures, after any necessary grading or clearing for the facility, at least 1,000 square feet with no individual dimension of less than 25 feet. Minimum tree size and root protection zone requirements shall be pursuant to paragraphs 8.3.1D.3.a, d, and e, Clusters of Trees.
- ii. Any root protection zone located off-site, for existing on-site trees that will be used to meet paragraph 5.3.3N.4.3(1)(f)i, above, shall be permanently protected through a conservation easement or method that provides similar protection from disturbance.
- iii. The tower shall be designed to match a species located within the existing cluster of trees, with the support structure to be designed as a tree trunk and antenna arrays flush-mounted and completely concealed by limbs, branches, and leaves.
- iv. Limbs, branches, and leaves shall cover at least the upper 50% of the support structure, and shall cover any of the support structure that extends above the tree line of the cluster of trees.

(2) Approval

In addition to applicable site plan review, the following approvals are required:

- (a) A minor special use permit pursuant to Sec. 3.9, Special Use Permit, and paragraph 5.3.3N.5, Applications Requiring Special Use Permit Approval, shall be required if the proposed WCF is located on a property with residential or PDR zoning, or within 450 feet of property zoned as residential or PDR, and is either:

- i. A monopine or faux tree, or unipole, of any height; or
 - ii. Any other freestanding, concealed WCF above 60 feet in height.
- (b) A major special use permit pursuant to Sec. 3.9, Special Use Permit, and paragraph 5.3.3N.5, Applications Requiring Special Use Permit Approval, shall be required for any freestanding, concealed or unipole WCF proposed within 300 feet of a designated State of North Carolina Scenic Byway.

f. Freestanding, Non-Concealed WCF

(1) Standards

(a) General

- i. In all RR and RS-20 districts, freestanding, non-concealed WCFs shall only be permitted on parcels with a minimum lot size of five acres..
- ii. Freestanding, non-concealed WCFs shall not be permitted in the RS-8 and RS-10 Districts.



(b) Height

i. General

Calculations of height shall include the foundation of the WCF wireless support structure at grade, but exclude lightning rods for the dissipation of lightning, or lights required by the FAA that do not provide support for any antennas.

ii. In the RS-20 District

The maximum height shall be 55 feet.

iii. In the RR District

The maximum height shall be 120 feet.

iv. In All Other Districts Pursuant to Sec. 5.1, Use Table, and the restrictions in paragraph (a) above, the maximum height shall be 180 feet.

(c) Setbacks

The following setback requirements are established to mitigate potential safety and aesthetic impacts upon surrounding properties.

- i. The minimum setback of the WCF from each property line shall be 120% of the height of the tower, or 85 feet, whichever is greater. Except in residential districts, a reduction in the minimum setbacks may be approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- ii. The minimum setback from the centerline of a natural gas line easement for gas lines measuring at least eight inches in diameter shall be 120% of the height of the tower, or 85 feet, whichever is greater.

(d) Buffers

A project boundary buffer of at least 60% opacity and minimum 10-foot width, pursuant to the requirements of Sec. 9.4, Project Boundary Buffers, shall surround the base of the WCF equipment compound. Existing trees and shrubs on the site can be used pursuant to Sec. 9.3, Existing Vegetation Credits for Required Landscaping, or paragraph 9.4.4, Natural Buffers, as applicable.

(e) Fence/Wall

An eight-foot tall, 100% opaque fence or wall per the requirements of Section 9.9, Fences and Walls, shall surround the WCF equipment compound.

(f) Aesthetics

Freestanding, non-concealed WCFs shall be limited to monopole-type wireless support structures.

(g) Required Expansion Capability

- i. Freestanding, non-concealed WCFs up to 120 feet in height shall be engineered and constructed to accommodate at least two antenna arrays.
- ii. Freestanding, non-concealed WCFs from 120 feet to 150 feet in height shall be engineered and constructed to accommodate at least three antenna arrays.
- iii. Freestanding, non-concealed WCFs above 150 feet in height shall be engineered and constructed to accommodate at least four antenna arrays.

(2) Approval

In addition to applicable site plan review, the following additional approval is required.

- (a) A minor special use permit pursuant to Sec. 3.9, Special Use Permit, and paragraph 5.3.3N.5, Applications Requiring Special Use Permit Approval, shall be required for all freestanding, non-concealed WCFs unless proposed within 300 feet of a designated State of North Carolina Scenic Byway.
- (b) A major special use permit pursuant to Sec. 3.9, Special Use Permit, and paragraph 5.3.3N.5, Applications Requiring Special Use Permit Approval, shall be required for any freestanding, non-concealed WCF proposed within 300 feet of a designated North Carolina Scenic Byway.

5. Applications Requiring Special Use Permit Approval

- a. The following shall be required, as applicable, in addition to the findings required pursuant to paragraph 3.9.8A, General Findings, in order for the approving authority (the Board of Adjustment or governing body, as applicable) to approve the special use permit.
 - (1) Evidence that it is not reasonably feasible to collocate new antennas and equipment on an existing wireless support structure or structures within the applicant's geographic search ring. Collocation on an existing WCF support structure is not reasonably feasible if collocation is technically or commercially impractical, or the owner of the existing WCF support structure is unwilling to enter into a contract at fair market value.
 - (2) That the use of existing facilities would prevent the provision of personal wireless services in the area of the City and/or County to be served by the proposed WCF.
 - (3) In determining whether a WCF is in harmony with the area, and the effects on and general compatibility of a WCF with adjacent properties as specified in paragraph 3.9.8A, General Findings, the approving authority shall consider the aesthetic effects of the WCF as well as factors that mitigate the aesthetic effects.
 - (a) Documentation of balloon tests and other methodologies used to simulate the height and appearance of the proposed WCF shall be provided by the applicant, along with descriptions of the locations, distances, and vantage points that formed the basis of the simulation(s).
 - (b) Factors that the approving authority may consider in determining the aesthetic effects of a proposed WCF include:
 - i. The protection of the view in sensitive or particularly scenic areas and areas specially designated in adopted plans such as unique natural features, scenic roadways, and historic sites;
 - ii. The concentration of WCFs in the proposed area; and,
 - iii. Whether the height, design, placement, or other characteristics of the proposed WCF could be modified to have a less intrusive visual impact.
- b. The approving authority shall not make a determination on the electromagnetic field (EMF) effects of the WCF on the health of the public, as specified in the third finding in paragraph 3.9.8A, General Findings. Documentation that certifies that the facility meets or exceeds applicable American National Standards Institute (ANSI) standards as adopted by the FCC in order to protect the public from unnecessary exposure to electromagnetic radiation shall be sufficient. This shall not preclude other issues regarding the health, safety, and welfare of the public from being considered in order to satisfy the finding.
- c. **Required Balloon Test**

A balloon test shall be required for all proposed WCFs that require a special use permit.

- (1) The balloon shall be at least three feet in diameter and oblong.
- (2) The color of the balloon shall be red or orange.
- (3) The test shall be within 50 feet of the proposed location of the WCF tower.
- (4) The balloon shall be raised to the height of the proposed WCF and stabilized for windy conditions.
- (5) The test shall be done during daylight hours and for at least four consecutive hours.
- (6) Weather conditions during the test shall be recorded.
- (7) Notification
 - (a) Owners of property within 600 feet of the property under consideration for a proposed WCF site shall be notified in writing by first class mail, at least 14 days prior to the test date. Measurement shall be made from the property lines of the subject property.
 - (b) The notification shall include:
 - i. The date, time, and location of the test;
 - ii. An alternative date and time, as needed;
 - iii. A map indicating the location(s) of the test(s); and
 - iv. Contact information for the individual(s) requesting the test.
 - (c) At least one sign with a minimum dimension of two feet by three feet shall be posted on the site, and be legible and visible along the most prominent right(s)-of-way adjacent to the property of the proposed WCF site. The posting shall be at least 14 days before the test date. The sign shall indicate the purpose, and provide the date and time of the test, the alternate test date and time, and the contact information for the individual(s) requesting the test.
 - (d) A list of the notified property owners and their properties, a copy of the notification sent to each owner, and affidavits attesting to mailing and sign posting per Ordinance standards shall be submitted with the application for the special use permit.

6. Variance

Technical dimensional requirements shall not prohibit or have the effect of prohibiting the provision of personal wireless services, pursuant to the *Telecommunications Act of 1996*. Applicants may seek variances, pursuant to the requirements of Sec. 3.14, Variance, to technical dimensional requirements that an applicant claims have the effect of prohibiting the provision of personal wireless services.

7. Third Party Review

Due to the complexity of the methodology or analysis required to review certain applications for a wireless communication facility, review by a third party expert, the costs of which shall be the responsibility of the applicant and in addition to other applicable fees, shall be required for any special use permit or variance application, including all supporting documentation. The third party review shall be submitted as evidence to the Board of Adjustment or governing body, as applicable.

8. Abandonment

If it is determined by the Planning Department that a WCF has been inoperable for at least six consecutive months, the WCF will be considered abandoned. The owner of the facility shall remove the facility within 90 days of receipt of a notice of abandonment from the Planning Department. After such time has elapsed, if the facility has not been removed, enforcement action pursuant to Article 15, Enforcement, shall commence.

9. Structural Integrity Certification

A third-party structural analysis sealed by a registered professional engineer with WCF expertise shall be submitted by the owner of the facility to the Planning Director, or designee, every five years from the date of the issuance of the certificate of compliance for the support structure. The analysis shall certify that the structure has been inspected pursuant to the applicable building and safety codes and is structurally sound. If the required structural certification cannot be provided, the Planning Director shall issue a notice of violation and provide a timeframe to either repair or remove the facility.

5.3.4 Commercial Use Standards

A. Adult Establishments

Adult establishments shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. No property associated with the use shall be closer than 1,000 feet to a property line of a residential zone. No building or structure associated with the use shall be closer than 50 feet to a property line of an adjacent nonresidential zone.
2. No property associated with the use shall be closer than 1,000 feet to a pre-existing place of worship, state licensed day care facility, public or private school, public park, or library.
3. The minimum straight line distance between the property lines of two adult establishments shall be 2,000 feet. No two adult establishments shall be located within the same building.
4. Measurements shall be made from the property line of the proposed adult establishment to the property line or zoning district line as noted above, and from the property line of any separate parking lots used for the adult establishment.

B. All Retail Sales and Service

Retail sales and service uses shall be permitted in accordance with the use table in paragraph 5.1.2, Use Table, subject to the following standards:

1. Within the Rural Tier, CG uses shall be limited to a grocery store in areas designated as Village Centers in the Comprehensive Plan.
2. Within the UC and UC-2 Districts, limited retail uses, such as university-related bookstores and dining facilities located within other buildings, shall be permitted, to the extent that they are designed to serve the on-campus population of the university or college and not to attract additional traffic to the campus.

C. Antique Shops

Antique shops shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The parcel on which the shop is located shall be a minimum of five acres.
2. Backlit signs shall be prohibited.
3. The maximum parking allowed shall be no more than the minimum parking required.

D. Bed and Breakfasts

Bed and breakfasts shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. An approved floor plan shall be kept on file with the Inspections Department.
2. An owner or manager shall reside on site.
3. There shall be no substantial modifications to the exterior appearance of the structure; however, fire escapes, handicapped entrances and other features required by building or fire codes can be added to protect public safety.
4. Breakfast, lunch, and/or dinner can be available on the premises, and shall be only for guests and employees of the inn. Rooms shall not be equipped with cooking facilities.
5. Parking shall not be allowed in any street yard.

E. Car Washes

Car washes shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. No storage, repair, or sales of vehicles shall be allowed on the site.
2. Provisions shall be made for an on-site drainage system to capture water used to wash vehicles. This water shall be discharged into a sanitary sewer system or another approved on-site system and shall not be discharged into the stormwater system.

F. Commercial Parking

Commercial parking shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Commercial parking in the Downtown and Compact Neighborhood Tiers adjoining single-family residential development shall require installation of a wall a minimum of six feet in height along each property line adjacent to residential development pursuant to Sec. 9.9, Fences and Walls.
2. Commercial parking shall not be permitted in the S2 sub-district of the CD District.
3. Commercial parking shall only be permitted in the P sub-district of the CD District if buildings surround the parking area so that it is not visible from the public or private right-of-way or adjacent property.

Commentary: Parking areas will not be considered visible if they can only be seen by looking along driveways.

G. Convenience Stores with Gas Sales

Convenience stores with gas sales shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Fuel pumps shall be located at least 15 feet from the property line.
2. No outdoor storage shall be allowed.
3. Storage of vehicles for 15 days or more shall be prohibited.
4. A spill prevention and counter measures plan shall be provided prior to construction plan approval that includes, at a minimum:
 - a. Clean up procedures for fuel (or other hazardous material) spills occurring inside and outside the building;
 - b. Counter measures for use in preventing fuel (or other hazardous material) spills from entering the stormwater collection system; and
 - c. Routine cleanup procedures for work areas and parking areas. Washdown water shall not be permitted to enter the stormwater collection system.
5. Within the CN District and the Design Districts, the maximum number of fueling stations shall be limited to eight. (County Only) Within the SRP-C district, the maximum number of fueling stations shall be limited to eight.
6. Within the S1 and S2 sub-districts of the CD District, Convenience Stores with Gas Sales shall not be permitted.
7. One parking space per two fueling stations can be credited towards minimum parking requirements per paragraph 10.3.1, Required Motorized Vehicle and Bicycle Parking.
8. (County Only) Within the SRP-C District, no fueling pumps or other vehicular areas shall be located between the primary structure and the street.

H. Drive-In Theaters

Drive-in theaters shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The site shall have access from a major or minor thoroughfare.
2. The face of the projection screen shall not be visible from any public street within 1,500 feet.
3. Food sales shall be available to patrons of the drive-in theater only.
4. Vehicle areas shall be visually shielded so that lights will not shine onto adjacent property.

I. Drive-Through Facilities

Drive-through facilities shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Where no street separates the use and residentially zoned property, at least 40 feet of separation shall be maintained between the residential lot line and the drive-through facility
2. The location of drive-through windows and associated facilities (for example: communications systems and access aisles) shall be identified on all site plans.
3. Any speaker systems associated with a drive-through facility shall be designed and located so as not to adversely affect adjacent uses.

4. Drive-through lanes between the right-of-way of a roadway and a building shall require landscaping pursuant to Sec. 9.8, Vehicle Use Area Landscaping, if the drive-through lane is within 50 feet of, and visible from, the roadway. Such landscaping shall be installed and maintained along the entire length of the drive-through lane and the adjacent roadway.
5. (County Only) Within the SRP-C District, no drive-through lanes or other vehicular areas shall be located between the primary structure and the street.

J. Electronic Gaming Operations

Electronic gaming operations shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Electronic gaming operations shall not be located on the same property as, and shall be located at least 500 feet from, the following uses:
 - a. Residential;
 - b. Place of worship;
 - c. Elementary, middle, or high schools;
 - d. Daycare facilities;
 - e. Parks; and
 - f. Other electronic gaming establishments.
2. Measurements shall be made as a straight line measurement from the closest point on the property line of the residential, place of worship, school, daycare, park, or other electronic gaming uses consisting of buildings or associated parking areas, to the closest point of the property line of the proposed electronic gaming operation, consisting of either a building or associated parking area.
3. Alcohol shall not be sold, provided, or consumed.
4. No outside storage or activities are allowed.
5. No lighting that flashes, changes, alternates, or moves shall be visible from the exterior of the establishment is allowed.
6. The maximum number of signs allowed shall be one.
7. No sign shall have changeable copy.

K. Firing Range, Indoor

Indoor firing ranges shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The range shall be located at least 200 feet from the property line of any of the following uses: existing dwelling or property holding a valid building permit for a dwelling, school, day care, or place of worship.
2. The walls shall be lined with a sound absorbing material certified by an acoustical professional, and any other measures necessary to ensure that the use will not create a nuisance or hazard shall be implemented.

L. Firing Range, Outdoor

Outdoor firing ranges shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The use shall be prohibited within the Airport Overlay. Proposals located within 5 miles of Raleigh Durham Airport shall provide a letter from the Airport Authority indicating that the use will not pose a hazard to aviation.
2. Outdoor ranges shall be prohibited within one mile of existing local airports, heliports, and helistops. The location of approved landing and take-off zones beyond the one mile boundary shall warrant an extension of the prohibition to ensure the safety of aircraft.
3. The property on which the range is located shall be at least 0.5 miles from the property line of any site being used for residential purposes.
4. The property on which the range is located shall be at least 1,000 feet from the property line of an existing school, day care or place of worship.
5. The distance from any firing point, measured down range in the direction of fire to the nearest property line of the property on which the range is located shall be at least 1,500 feet.
6. The range shall have backstops and embankments which meet the dimensional standards listed below.
 - a. **Backstop standards for ranges up to 900 feet in length:**

The range shall have an earth embankment not less than 25 feet in height and not less than 10 feet in thickness at the top along the entire length of the target line to serve as a backstop. The earth embankment shall retain a slope of 35 degrees from perpendicular or be terraced with timber or log retaining walls. Such embankment shall be topped with an earth filled double fence barricade not less than 15 feet in height and not less than three feet in thickness at the top. The required backstop can be either a natural terrain feature or a manmade earth embankment. In the case of a natural terrain feature, a topographic map at a scale of not less than one inch = 200 feet and two foot contour intervals showing the terrain feature shall be submitted with the initial application.
 - b. **Backstop standards for ranges greater than 900 feet in length:**

All the above standards shall apply except that the overall height shall increase 10 feet for every additional 300 feet or fraction thereof in additional range length.
7. A Suburban Tier buffer of 80% adjacent to vacant land, or 100% adjacent to developed land, as applicable, shall be required around the perimeter of the site.
8. The entrance and exit to an outdoor firing range shall be through gates which shall be locked during non-business hours.
9. Conditions of approval that may be considered in the decision to act on a special use permit pursuant to Sec. 3.9, Special Use Permit, include:

- a. Limits on hours of operation;
- b. Standards for lighting;
- c. Requirements for additional landscaping and berming; and
- d. Requirements to reduce noise such as installation of firing sheds.

M. Golf Course, Country Club, Swim Club, Tennis Club

Golf courses, country clubs, swim clubs, and tennis clubs shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. No maintenance building or clubhouse shall be closer than 100 feet to any residential use.
2. In residential districts, parking located between the structure and the street shall be set back from the right-of-way beyond the minimum or maximum street yard, as applicable.

N. Hotels, Motels, and Extended Stay Residences

Hotels, motels, and extended stay residences shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. A minor special use permit shall be required if any access to a hotel, motel, or extended stay residence is through or adjacent to (including directly across a public right-of-way from) a residential district or use, unless such access is consistent with an approved development plan that specifies the type, size, and intensity of use.
2. All hotel, motel, and extended stay residence buildings, vehicular use areas that are at grade or higher, and elements of associated underground vehicular use areas that extend to grade or higher shall be located at least 50 feet from any property line adjacent to a residential district or use.
3. Any accessory commercial activities such as restaurants shall not be located along the side of the property adjacent to a residential district or use.
4. Any outdoor recreation facilities, such as swimming pools, shall not be located along the side of the property adjacent to a residential district or use. If the outdoor recreation facility is a swimming pool, it shall meet the standards of paragraph 5.4.9, Swimming Pools, with regard to fencing.
5. A minor special use permit shall be required if the property line of a hotel, motel, or extended stay residence is 200 feet or less from a residential district or the property line of a single-family residential use, unless such location is consistent with an approved development plan that specifies the type, size, and intensity of use.
6. In the Design Districts, the requirements in paragraphs 1 and 5 shall not apply. Instead, a minor special use permit shall be required if a hotel, motel, or extended stay residence is located in the S2 sub-district of the DD District. This use shall not be permitted in the S2 sub-district of the CD District.
7. In the Design Districts, the requirements in paragraphs 2, 3, and 4 shall apply only if a hotel, motel, or extended stay residence is adjacent to a residential district.
8. In the CD District, a six-foot-high masonry wall shall be provided along the entire property line between any outdoor recreation facility or vehicular use area and an adjacent pre-existing residential use at ground level.

9. (County Only) Within the SRP-C District, the standards in paragraphs 1-5 shall apply unless modified as follows:
 - a. Paragraph 1 shall not apply unless the access is through or adjacent to a residential district or use not located within the SRP-C District.
 - b. The requirements in paragraphs 2, 3, and 4 shall apply only if a hotel, motel, or extended stay residence is adjacent to a residential district or use not located within the SRP-C District.
 - c. A six-foot-high masonry wall shall be provided along the entire property line between any outdoor recreation facility or vehicular use area and an adjacent pre-existing residential use at ground level not located within the SRP-C District.

O. Manufactured Home Sales

Manufactured home sales shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The display area of the property shall be a minimum of 500 feet from any residential district or use.
2. The display area shall be set back a minimum of 25 feet from the street right-of-way.
3. In addition to the landscaping requirements found in Article 9, Landscaping and Buffering, the following landscaping shall be provided within any street yard:
 - a. A hedge which is at least 24 inches in height; or
 - b. Plantings which meet the requirements for plantings for paragraph 5.3.4U.4.
4. Storage and repair activities shall be screened from off-site views.
5. A minimum separation of at least 10 feet shall be maintained between display homes. Display homes which are visible off-site shall be provided with some type of material and/or landscaping around the base which will prevent open views underneath the manufactured home.
6. In addition to the signs typically allowed in the district, each display house can have a placard not to exceed three square feet in area which gives information about the house.

P. Nightclubs or Bars

Nightclubs or bars shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. This section shall not apply to Outdoor Dining areas pursuant to City Code 54-110.
2. With the exception of nightclubs or bars located within the DD-C District, the applicant shall demonstrate that no existing place of worship is located within 250 feet of the proposed nightclub or similar establishment.
3. Within the DD-C District, the applicant shall demonstrate that no existing place of worship is located within 50 feet of the proposed nightclub or similar establishment.
4. Measurements shall be made from the point on the place of worship, whether on the building or associated parking area, that is closest to the proposed night club or similar establishment to the point on the proposed nightclub or similar establishment, whether

on the building, associated parking area, or outdoor activity area that is closest to the place of worship.

5. No outside storage shall be located on the site.
6. Outside activities shall be allowed only in the DD-C and DD-S1 sub-districts. The following standards shall be met:
 - a. For the area between the building line and the right-of-way, excluding alleys, the outdoor activity area shall:
 - (1) Not exceed 50% of the interior seating area square footage;
 - (2) Be physically delineated and separated from the public right-of-way by a fence or wall in conformance with the requirements of Sec. 9.9, Fences and Walls;
 - (3) Be utilized for seating areas only; and
 - (4) Be prohibited from having amplified music.
 - b. For all other areas, the outdoor activity area shall:
 - (1) Not exceed 100% of the interior seating area square footage;
 - (2) Be physically delineated and separated by a fence or wall as follows:
 - (a) A minimum six foot high fence or wall at the property line along adjacent properties; and
 - (b) A minimum three foot high fence or wall at the property line along rights-of-way.
 - (c) When a building wall is present along adjacent properties, no fence or wall shall be required along the length of that building wall.
 - (d) The fence or wall shall be in conformance with maximum heights and construction standards pursuant to Sec. 9.9, Fences and Walls.

- c. All outside activities shall be conducted in accordance with paragraph 7.8.7, Noise.
 - d. Any area established for outside activities shall be shown on an approved site plan.
- 7. Nightclubs or bars in the DD-S2 District shall be located 50 feet or more from any residential zoning district outside of the Downtown Tier. Measurements shall be made from the residential district boundary to the point on the proposed nightclub or bar, whether on the building or associated parking area, that is closest to the residential district boundary.
- 8. Nightclubs and bars shall not be permitted in the S2 sub-district of the CD District.
- 9. (County Only) Within the SRP-C District, the following shall apply:
 - a. The applicant shall demonstrate that no existing place of worship is located within 50 feet of the proposed nightclub or similar establishment.
 - b. The method of measurement in paragraph 4 shall apply.
 - c. Outdoor activities are allowed and the standards for outdoor activities within paragraphs 6(a-d) shall apply.
 - d. No outside storage shall be located on the site.

Q. Outdoor Recreation

Outdoor recreation activities shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

- 1. If not otherwise required, a minor special use permit shall be required if any access to the site is through or adjacent to (including directly across a public right-of-way) a residential district or use, unless such access is consistent with an approved development plan that accurately specifies the type, size, and intensity of use.
 - a. This requirement shall apply in the CD District only if access is through or adjacent to a residential district.
 - b. This requirement shall not apply in the DD District.
 - c. (County Only) This requirement shall not apply in the SRP-C District.
- 2. Except in the SRP-C (County Only), CD and DD Districts, a 50-foot setback from any property line adjacent to a residential district or use shall be maintained for any unlighted structure, food sale or dining area, playground, viewing area, court, field, or other athletic or entertainment area or facility.
 - a. In the CD District, a 15 foot setback shall be maintained instead of the build-to line in paragraph 6.12.4A.1, Building Placement.
 - b. In the DD District, no setback or build-to line is required.
 - c. (County Only) Within the SRP-C District, a 15-foot setback shall be maintained from any property line adjacent to a residential district or use not located within the SRP-C District.

3. Except in the SRP-C (County Only), CD and DD Districts, a 100-foot setback from any property line adjacent to a residential district or use shall be maintained for any lighted structure, food sale or dining area, playground, viewing area, court, field, or other athletic or entertainment area or facility.
 - a. In the CD District, a 30 foot setback shall be maintained instead of the build-to line in paragraph 6.12.4A.1, Building Placement. In addition, the site plan shall include documentation by a registered professional with experience in lighting certifying that the lighting does not exceed 0.5 foot-candle at the property line of any adjacent residential district or use.
 - b. In the DD District, no setback or build-to line is required.
 - c. (County Only) Within the SRP-C District, a 30-foot setback shall be maintained from any property line adjacent to a residential district or use not located within the SRP-C District. In addition, the site plan shall include documentation by a registered professional with experience in lighting certifying that the lighting does not exceed 0.5 foot-candle at the property line of any adjacent residential district or use.
4. Except in the DD District, food sales shall be provided for patrons of the recreational activity only.
5. In the DD District the following standards shall apply:
 - a. Unless located on the roof of a structure, miniature golf courses shall have a maximum site area of 0.5 acres.
 - b. Outdoor recreation uses are only allowed on the roof of a structure if they are set back a minimum of 10 feet from the building face, in addition to any building setbacks.
 - c. Batting cages (except where associated with ballparks), golf driving ranges, and amusement parks are only allowed in the DD District if they are not visible from adjacent right-of-way. In association with ballparks, batting cages are allowed to be visible from adjacent right-of-way.
 - d. Design Standards
 - (1) Chain link fencing is prohibited except when the outdoor recreation use is on the roof of a structure and the fencing is not visible from the adjacent right-of-way.
 - (2) For outdoor recreation uses provided at, or within five feet of, ground level, a fence or wall shall be provided at the build-to line of the property as established by paragraph 6.12.3A.1, Building Placement.
 - (3) All fences and walls shall be in conformance with the standards of Sec. 9.9, Fences and Walls.

6. In residential districts, parking located between the structure and the street shall be set back from the right-of-way beyond the minimum or maximum street yard, as applicable.

R. Paintball or Similar Recreation Facilities on Natural Sites

Paintball or similar recreation facilities on natural sites shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The site shall be at least five acres in size.
2. The use shall not be permitted to locate adjacent to any existing place of worship, day care or school.
3. All activities shall take place at least 100 feet from any residential district or use.
4. The use shall not change or modify the existing natural landscape except for accessory services or parking areas. Movable walls, barricades, or similar features shall be permitted as a part of the recreational use.
5. Any building shall be located at least 100 feet from all property lines. Total building floor area shall be as follows:
 - a. For sites in the Rural Tier, total building floor area shall be in accordance with the table below:

Site Acreage	Maximum Building Floor Area (square feet)
5 --10	750
More than 10--15	1,500
More than 15--20	2,000
More than 20--25	2,500
More than 25--30	3,000
More than 30--35	3,500
More than 35--40	4,000
More than 40--45	4,500
More than 45	5,000

- b. For sites in all other Tiers, the maximum building floor area shall be 750 square feet.
6. A buffer consistent with that of an Industrial Use adjacent to a Residential Use in the Suburban Tier shall be required (See Sec. 9.4, Project Boundary Buffers).
7. No outdoor storage shall be allowed.
8. No outdoor public address system shall be used.

S. Payday Lenders

Payday lenders shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Within the S1 and S2 sub-districts of the CD Districts, payday lenders shall not be permitted.

T. Self Service Storage

Self service storage shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The facility shall be screened from view from adjacent properties pursuant to Sec. 9.7, Screening, except in the DD District.
2. In the DD District, access to individual storage units shall be from corridors internal to the building.

U. Vehicle Sales, Leasing, and Rentals

Vehicle sales, leasing, and rentals shall be permitted in accordance with the use table in Sec. 5.1, subject to the following:

1. All junked or inoperable vehicles or equipment shall be within a completely enclosed building.
2. Vehicle or equipment repairs made on-site shall be subject to the restrictions of paragraph 5.3.4V, Vehicle Service, and Vehicle Service Limited.
3. Adequate on-site area shall exist for the loading and unloading of vehicles from car carriers to ensure that no such loading or unloading occurs in any public right of way.
4. Vehicle sales, leasing, and rental facilities, except in the CI and Design districts, shall meet the following landscaping standards instead of those in Sec. 9.8, Vehicular Use Area Landscaping:
 - a. Trees shall be planted at the rate of one tree per 50 linear feet of display area perimeter, and shrubs at the rate of one shrub per five linear feet of display area perimeter, unless a project boundary buffer pursuant to Sec. 9.4, Project Boundary Buffers, is required between the edge of the display area and the property line or right-of-way.
 - b. Plants can be grouped together, provided that a contiguous growing area as specified in *The Landscape Manual for Durham, North Carolina*, not encroached upon by impervious pavement, shall be provided for each planted tree. Sidewalks shall be permitted to encroach on sites within the Urban, Compact Neighborhood, and Downtown Tiers when a critical root path system is implemented pursuant to the *Landscape Manual*.
 - c. Plantings shall be located in an area adjacent to the display area, and between the display area and the property line; and shall meet the requirements for size and proximity to the display area as set for vehicular use areas in paragraph 9.8.1C, Standards, excluding paragraph 9.8.1C.7.
 - d. Shrubs shall not be required between a right of way (except an alley) or access easement and the display area if the display area is more than 50 feet from the right-of-way or access easement.
5. Vehicle sales, leasing, and rental facilities in the CI and Design districts shall meet the requirements of paragraph 9.8.4, Vehicular Use Area Landscaping in the CI and Design Districts.

6. The provisions of Sec. 7.5, Outdoor Display, shall not apply. No vehicles shall be displayed in required landscaping or in rights-of-way.
7. (County Only) Within the SRP-C District, the following shall apply:
 - a. Paragraphs 1 through 3 shall apply.
 - b. The requirements within paragraph 9.8.4, Vehicular Use Area Landscaping in the CI and Design districts, shall apply instead of those found in paragraph 4, above.
 - c. Paragraph 6 shall apply.
 - d. Only indoor vehicle sales facilities shall be permitted. No outdoor vehicle storage or sales are allowed.
 - e. Off-site loading and unloading is permitted in association with indoor sales.

V. Vehicle Service, and Vehicle Service Limited

Vehicle service (full or limited) shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Fuel pumps shall be at least 15 feet from property lines.
2. Any repair, servicing, maintenance or other work on vehicles shall be conducted within an enclosed structure.
3. No outdoor storage shall be allowed.
4. No more than two inoperable motor vehicles per service bay, with a total maximum of ten regardless of the number of service bays, shall be kept on-site at any time.
5. A spill prevention and counter measures plan shall be provided prior to construction plan approval that includes, at a minimum:
 - a. Cleanup procedures for spills occurring inside and outside the building;
 - b. Counter measures for use in preventing spills from entering the stormwater collection system; and
 - c. Routine cleanup procedures for work areas and parking areas. Wash-down water shall not be permitted to enter the stormwater collection system.
6. Existing vehicle service (full or limited) facilities that were in operation prior to January 1, 1994, and do not comply with the provisions above, shall:
 - a. Provide an opaque screen (a fence or wall at least six feet in height but no more than eight feet in height or sufficient landscaping) to fully screen all outdoor operations of the vehicle repair shop, including vehicle storage, from off-site views, including views from rights-of-way and adjoining properties.
 - b. Additional screening shall not be required if no operations are visible from off-site.
 - c. Fences or walls, when used, shall not be located within any sight distance triangles at any intersection, but shall be set back to provide unimpeded vision clearance for pedestrian and vehicular traffic.

W. Veterinary Clinics, Animal Hospitals, and Kennels

Veterinary clinics, animal hospitals, and kennels shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. No outdoor runs, kennels, or storage shall be allowed in PDR or Design Districts. (County Only) No outdoor runs, kennels, or storage shall be allowed in the SRP-C District.
2. A 300-foot separation shall be maintained between the outdoor areas where animals are kept and any property line of any adjacent residential use in a residential district.
3. A minimum six-foot tall wall shall be installed and maintained between outdoor areas where animals are kept and any property line of an adjacent residential use in a non-residential district.
4. Within the S1 and S2 sub-districts of the CD Districts, Veterinary Clinics, Animal Hospitals, and Kennels shall not be permitted.
5. In the RR District, parking located between the structure and the street shall be set back at least 25 feet from the right-of-way.

5.3.5 Office Use Standards

A. Conference Centers or Retreat Houses

Conference centers and retreat houses shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. If available, housing and meals shall be provided for participants and caretakers only.
2. Parking shall not be located in the street yard.

5.3.6 Industrial Use Standards

A. Asphalt Plants and Other Facilities for the Manufacture and Storage of Chemicals, Petroleum Products, Explosives, and Allied Products (When Not an Accessory Use – Service Stations and Research Laboratories are not Addressed by this Provision)

Asphalt plants and other facilities shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The boundary of the property shall be at least 1,500 feet from any residential use or zone.
2. The use shall be totally enclosed by a security fence or wall at least 8 feet high or enclosed within a fire proof building.
3. All plans shall be reviewed by Fire and Emergency staff prior to approval in order to determine that existing services provide adequate protection for citizens.

B. Concrete Manufacturing Plants

Concrete manufacturing plants shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The facility shall not be within 1,500 feet of property zoned residential, however, intervening highways, streets, railroads, and similar rights-of-ways shall be included in the 1,500-foot measurement.

2. The property shall not be adjacent to an existing hospital, day care facility, educational facility, place of worship, convalescent center, or assisted living center.
3. The site shall be at least four acres in area and shall have direct access on a major or minor thoroughfare.
4. Property boundaries facing public streets shall be fenced with a six foot high fence and the fence shall be two-thirds screened by vegetation at planting.

C. Hazardous and Low Level Nuclear Material Disposal and Storage Areas

Hazardous and low level nuclear material disposal and storage areas shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The facility use shall comply with all applicable State and federal regulations.
2. The facility shall be located at least 1,500 feet from any residential zone.
3. Maps and engineering drawings shall be provided showing proposed drainage, proposed sewer system design, the depth of the water table, soil composition, all existing surface water, and all existing uses within ¼-mile of the property line.
4. The site shall be enclosed by a fence or wall at least 6 feet high. Entrance and exit shall be through a gate which shall be locked during non-business hours.

D. Light Industrial Uses

Light industrial uses shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Within the DD District, the following light industrial uses shall not be allowed:
 - a. Equipment rental;
 - b. Maintenance yard or facility; and
 - c. Regional recycling center.
2. Within the SRP District, the only light industrial uses permitted shall be the manufacture or assembly of equipment, instruments (including musical instruments), precision items, or electrical items.
 - a. The manufacture or assembly of appliances, toys, or other similar items are not permitted.
 - b. Outdoor storage for manufacturing is allowed only as an accessory use.
3. No outdoor operations or storage shall be visible from the street.
4. (County Only) Within the SRP-C District, the following light industrial uses shall not be allowed:
 - a. Equipment rental;
 - b. Maintenance yard or facility; and
 - c. Regional recycling center.

E. Research and Development

Research and development shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. Research and development shall not be permitted in the S2 sub-district of the CD District.

F. Resource Extraction

Resource extraction uses shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The application for the use shall include a plan for restoration procedures and methods to ensure financing of the restoration once the operation ceases.

G. Transfer Stations

Transfer stations shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The transfer station shall only handle waste that can be legally handled or disposed of in a solid waste landfill facility. This limitation shall not preclude use of the transfer station site for collection, processing, storage, and transfer of recyclable materials or for other waste reduction activities.
2. The transfer station entrance driveway shall be located on a major thoroughfare located within 2,000 feet of an interstate highway interchange.
3. There shall be at least 500 feet of separation between the transfer station facility [building and vehicular use areas adjacent to the building] and the nearest residential structure.
4. The facility shall conform to all applicable State and federal regulations.

H. Wholesale Trade

Wholesale trade shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

Outside storage or operations shall not be visible from the street.

I. Wrecking, Junk, and Salvage Yards

Wrecking, junk, and salvage yards shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. The facility shall not be within 1,000 feet of property zoned residential; however, intervening highways, streets, railroads, and similar rights-of-ways shall be included in the 1,000-foot measurement.
2. The facilities shall be enclosed by a fence and shall be screened from view. The fence shall be six-feet high, measured from the lowest point of grade. The fence shall be maintained in good condition. No stored materials shall be visible from ground level immediately outside the fence.
3. A spill prevention and countermeasures plan shall be provided prior to construction plan approval that includes, at a minimum:
 - a. Cleanup procedures for spills occurring inside and outside the building;
 - b. Countermeasures for use in preventing spills from entering the stormwater collection system; and

- c. Routine cleanup procedures for work areas and parking areas. Washdown water shall not be permitted to enter the stormwater collection system.
- 4. Existing wrecking, junk and salvage yards that were in operation prior to January 1, 1994, and do not comply with all of the provisions listed above, shall provide an opaque screen (a fence or wall at least six feet in height but no more than eight feet in height or sufficient landscaping) to fully screen the facility from off-site views, including views from rights-of-way and adjoining properties. Additional screening shall not be required if no operations are visible from off-site. Fences or walls, when used, shall not be located within any sight distance triangles at any intersection, but shall be set back to provide unimpeded vision clearance for pedestrian and vehicular traffic.

5.3.7 SRP District Use Standards

Within the SRP District:

- A. Helipads are allowed as an accessory use with approval of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- B. Retail sales and service uses, and restaurants without drive-through windows, are allowed as an accessory use with the following conditions:
 - 1. No signs shall be visible off-site.
 - 2. The use shall be located within a building housing a principal use allowed in the District.

Sec. 5.4 Accessory Uses and Structures

5.4.1 Accessory Structures

Accessory structures shall be subject to the following additional requirements:

- A. An accessory structure shall be clearly subordinate to the primary structure in aspects of size and purpose.
- B. Accessory structures shall be located as follows:
 - 1. Accessory structures associated with a single-family or duplex structure shall be located to the rear of the rear building line of the primary structure, with the following limitations and exceptions:
 - a. Except in the RU and RC Districts, the structure shall be no closer than five feet to the rear and side property lines.
 - b. Accessory structures in the RU and RC Districts shall be no closer than three feet to the side and rear property lines.
 - c. Accessory structures in the RR District can be located in front or to the side of the primary structure provided that:
 - (1) It is not located in the street or side yard; and
 - (2) It is on a lot at least two acres in size.
 - d. An accessory structure in the RS-20 District in the Suburban or Rural Tier can be located to the side of the primary structure provided that:
 - (1) It is not located in the side yard; and
 - (2) It is on a lot at least two acres in size.
 - 2. Accessory structures in design districts shall be located to the rear of the rear building line of the primary structure(s) and shall be subject to the side and rear yard requirements of those districts.
 - 3. Accessory structures for all other development not indicated above shall be located to the side or rear of the primary structure, but not within side or rear yards. For developments with more than one primary structure, the primary structure located closest to the right-of-way shall be used to locate the accessory structure.
- C. Any accessory structures located less than five feet from the property line shall construct a wall meeting North Carolina Building Code Standards for fire obstruction on that side of the structure facing the property line.
- D. The height of an accessory structure in residential areas shall comply with the following standards:
 - 1. In RS Districts, the height shall not exceed 15 feet when the structure is within ten feet of the property line.
 - 2. In the RU and RC districts, the height of an accessory structure shall not exceed 25 feet when the structure is within five feet of the property line.
- E. Within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas, an accessory structure shall not exceed 1,000 square feet in area and shall meet the following criteria:

1. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 2. Accessory structures shall not be temperature-controlled;
 3. Accessory structures shall be designed to have low flood damage potential;
 4. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 5. Accessory structures shall be firmly anchored in accordance with Section 8.4, Floodplain and Flood Damage Protection Standards;
 6. All service facilities such as electrical shall be installed in accordance with Section 8.4, Floodplain and Flood Damage Protection Standards; and
 7. An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 8.4, Floodplain and Flood Damage Protection Standards.
- F. In addition to the requirements in paragraphs A, B, C, and E, accessory structures in Design Districts shall comply with the following standards:
1. The height of the structure shall not exceed 35 feet and shall not exceed the primary structure in height; and
 2. The structure shall be compatible with the primary structure in style, materials, roof form, and details.

5.4.2 Accessory Dwellings

Accessory dwellings shall be subject to the following additional requirements:

A. General

1. Accessory dwellings shall not be permitted in Special Flood Hazard Areas or Future Conditions Flood Hazard Areas.
2. One additional off-street parking space shall be provided, except in the DD District.

B. In Residential Districts and on Properties Devoted to Residential Use

1. Residential properties developed with more than one dwelling unit shall not be permitted to develop accessory dwellings.
2. The primary dwelling shall be located on a lot which meets the minimum area requirements of the zoning district.
3. Only one accessory dwelling shall be allowed.
4. The accessory dwelling can be located within the primary dwelling or shall meet the locational and dimensional requirements for accessory structures.
5. The heated floor area of the accessory dwelling shall not exceed 30% of the heated or air-conditioned floor area of the primary dwelling, except in the RR District, where the heated or air-conditioned floor area can be a maximum of 50% of the primary dwelling heated or air-conditioned floor area on lots of four acres or larger.

Examples of accessory dwelling square footage are:

A 1,333 square foot primary dwelling is needed for a separate 400 square foot accessory dwelling. (30% of 1,333 = 400 square feet);

A 2,000 square foot primary dwelling is needed for a separate 600 square foot accessory dwelling.

Commentary: As with primary dwelling units, accessory dwelling units are required to meet all applicable building and housing codes.

6. If the accessory dwelling is proposed for location on a single-family property, the property shall retain a single family appearance from the street.
7. Use of a travel trailer or recreational vehicle (RV) as an accessory dwelling shall be prohibited within a residential district or on property devoted to residential use, except that use of a travel trailer or RV during temporary visits of two weeks or less shall be allowed.

5.4.3 Amateur Wireless Facility

- A. Non-commercial, amateur, ham radio or citizen's band antenna supporting structures, antennas or antenna arrays with an overall height less than 50 feet in Residential districts or with an overall height less than 70 feet in all other zoning districts can be developed, if in accordance with the following additional requirements.
 1. Towers and support structures shall meet the setback requirements for accessory structures for the zoning district in which the proposed facility shall be located, or 100% of the tower height, whichever is greater.
 2. The applicant shall commit in writing that the facility will be erected in accordance with manufacturer's recommendations.
- B. Non-commercial, amateur, ham radio or citizen's band antenna supporting structures, with a height greater than as provided above shall be regulated in accordance with paragraph 5.3.3N, Wireless Communication Facilities for Transmitting and Receiving Electronic Signals.

5.4.4 Home Occupations

Home occupations shall be allowed within any residential use subject to the following regulations:

A. General

The following requirements shall apply to all home occupations:

1. No display of goods, products or services shall be visible off site.
2. Only handmade items, foodstuffs, and crafts made on the premises can be offered directly for sale. No goods, products or commodities bought or secured for the express purpose of resale shall be sold at retail or wholesale on the premises. Catalog and electronic business orders may be received for goods, products or commodities bought or secured for the express purpose of resale at retail and wholesale when the products are received and shipped from the premises to fulfill catalog or electronic business orders.

3. Traffic and parking associated with the use shall not be detrimental to the neighborhood or create congestion on the street where the home occupation is located.
4. Vehicles used primarily as passenger vehicles shall be permitted in connection with the home occupation. Only one commercially licensed vehicle shall be allowed, except in the RS-20 and RR districts, where up to two heavy equipment vehicles can be permitted. All heavy equipment vehicles associated with a home occupation permit shall be screened from view from adjoining properties and the public right of way.
5. No equipment or process shall be used in connection with the home occupation that creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable off-site.
6. No hazardous materials can be manufactured, stored, processed or disposed of on the premises.
7. The home occupation shall be clearly incidental to the primary use as a residence. The total square footage devoted to the home occupation shall not exceed 30% of the floor area of the livable portion of the dwelling.
8. An accessory structure or an accessory dwelling can be used for all or a portion of the floor area of the home occupation but the combined total square footage devoted to the home occupation shall not exceed the limits described in paragraph A.7 above.
9. Internal alterations or construction modifications not customary in dwellings and exterior modifications to the dwelling to accommodate the home occupation shall be prohibited except to meet the accessibility requirements of the Americans with Disabilities Act.

Commentary: Use of an accessory structure for a home occupation may require modification of the structure to meet the habitable space requirements of the Building Code. If outside employees are associated with the home occupation, modifications to an accessory structure or accessory dwelling may also be required to comply with the Americans with Disabilities Act.

10. Tutoring or instructional services shall have no more than five students at one time.

B. Rural Home Occupations

The following requirements shall apply to all home occupations located on properties zoned Residential Rural District (RR) containing at least 10 contiguous acres in addition to the provisions of paragraph A. above:

1. In addition to persons residing on the premises, up to three nonresident employees can be engaged in the home occupation.
2. If a home occupation is located within an accessory structure or dwelling, the accessory structure or dwelling shall not be located closer to the front property line than the closest side of the primary dwelling to the front property line; nor closer to the side property line than the closest side of the dwelling to the side property line or 100 feet, whichever is a lesser distance, and not closer than 75 feet to the rear property line.
3. The home occupation can include outdoor uses or activities. Any areas used for outdoor activities shall be at least 250 feet from any property line and shall also be closer to the principal dwelling on the site than to any dwelling on an adjoining site.

4. Any home occupations utilizing these provisions shall be required to cease operations if the parcel size is reduced to less than 10 acres.

C. Other Home Occupations

In all districts other than RR, or in RR-zoned properties less than ten acres, the following standards apply in addition to the standards of paragraph A. above:

1. Only persons residing on the premises and up to one nonresident employee can be engaged in the home occupation.
2. No outside storage use or activity (except parking and, for day care homes, required recreation areas) shall be associated with the home occupation.

D. Telecommuting

Telecommuting shall not be considered a home occupation.

5.4.5 Storage of One or More Junk Vehicles

Junk vehicles shall be prohibited within a residential district or on a property devoted to residential use, except that junk vehicles owned by an occupant of the dwelling and stored within an enclosed building so that they are not visible from an adjacent property or a public right-of-way may be allowed. Within the Rural Tier, junk vehicles may also be screened with a permanent enclosure to meet this standard.

5.4.6 Manufactured Home Storage

Storage of a manufactured home shall be prohibited within a residential district or on property devoted to residential use, unless the manufactured home is lawfully permitted pursuant to Sec. 5.1, Use Table, or paragraph 5.5.2F, Manufactured Homes.

5.4.7 On-Site Recycling Facilities and Drop-Off Sites

Commentary: On-site recycling facilities and public recycling drop-off sites should not be confused with recycling centers, which are much larger regional centers that process recyclables. Examples of on-site recycling facilities include cardboard or aluminum can recycling bins. Public recycling drop-off sites include facilities located in church or school parking lots where the public may deposit recyclables.

- A. Recycling facilities and drop-off sites shall be permitted as an accessory use in all nonresidential districts and multi-family residential property.
- B. The drop-off site shall be kept free of litter, residue and debris by the party responsible for the maintenance and management of the drop off facility.
- C. Recycling drop-off sites shall be located at least 50 feet away from adjoining residentially zoned property.
- D. The drop-off site containers shall be durable, waterproof, covered and of uniform color. The name and phone number of the party responsible for maintenance shall be posted on the container.
- E. [City Only] Notwithstanding the other provisions of this section, unattended clothing donation containers are prohibited unless located at the operational site of a company or organization that collects used clothing for resale or donation as a primary business function.

An unattended clothing container is any box, bin, dumpster, trailer or other receptacle that is intended for use as a collection point for donated clothing or other household materials at times when no employee or representative of the sponsoring company or organization is present to accept donations. Prohibited clothing donation containers that exist at the time this section is adopted shall be removed within 30 days of adoption.

5.4.8 Satellite Dishes (Earth Stations)

Satellite dishes (earth stations) that are less than one meter (39.37 inches) in diameter in residential districts and less than two meters in diameter in all other zoning districts shall be exempt from the standards of this section. Satellite dishes exceeding these dimensions shall be subject to the following additional requirements:

- A. A Minor Special Use Permit issued in accordance with Sec. 3.9, Special Use Permit, shall be required.
- B. If attached to a roof or building, a letter certifying the roof's and building's structural stability shall be written and sealed by a licensed engineer, prior to any approval of a roof-mounted satellite earth station.
- C. No commercial messages shall be placed on the dish.

5.4.9 Swimming Pools

Commentary: In-ground and above-ground pools are subject to any applicable public health and building code requirements.

When allowed, in-ground and above-ground swimming pools that have a water depth over 24 inches and have a surface area of at least 100 square feet shall be subject to the following additional requirements:

- A. **Private Pools**

Private swimming pools (as well as the decking and equipment associated with the pool) located on any residential lots with the exception of those described in paragraph B below, shall not be located between the street and the principal structure unless located to the rear of the primary structure, and shall not be closer than five feet to any property line.
- B. **Outdoor Community Pools, Private Club Pools, or Townhouse, Mutiplex and Apartment Pools**
 - 1. Except for roof-top pools, outdoor pools including decking shall be located at least 100 feet from any property line adjacent to a single-family residential district or use. For purposes of this paragraph, a district or use that is across a public right-of-way shall not be considered adjacent.
 - 2. When the pool is adjacent to off-site residences, the playing of music detectable off-site on a public address system is prohibited. Informational announcements shall be permitted. This requirement shall not apply when a permit has been issued for a special event.
 - 3. All outdoor pools shall be enclosed by a fence that is at least four feet in height. The exterior walls of buildings can be incorporated as a portion of the fence to create a fully enclosed area around the pool. All fence openings into the pool area shall be equipped with self-closing and self-latching gates.

5.4.10 Vehicle Repair

Up to two vehicles can be repaired simultaneously on a residential property if the vehicles are registered to an occupant of the residence.

5.4.11 Vehicle Sales

Vehicle sales shall be prohibited within a residential district or on property devoted to residential use, except that the sale of a private vehicle registered to the occupant of the residence shall be allowed. No more than one such vehicle shall be displayed at a time.

5.4.12 Limited Agriculture (City Only)

Limited agriculture shall be subject to the following regulations:

A. General

1. Permits Required

A permit under Sec. 3.22, Limited Agriculture Permit (City Only), is required in order to conduct the uses designated by this section. Such uses are distinct from agricultural uses or agricultural use categories permitted under this Ordinance. The limited agriculture permit is personal to the permittee and cannot be assigned.

Commentary: A building permit issued by the City-County Inspections Department may be required in addition to a Limited Agriculture Permit.

2. Permit Revocation and Removal of Items

- a. Compliance with the requirements of this Ordinance shall create a presumption that the permitted use does not create a nuisance or threat to public health or safety. The permit shall, however, be revoked if the Planning Director determines that the permitted use creates a nuisance or detriment to public health or safety.
- b. Violation of ordinance standards shall result in permit revocation under paragraph 3.22.4, Revocation, and possible enforcement under Article 15, Enforcement, including civil and criminal penalties. Misrepresentation by a permittee shall result in permit revocation or voiding under paragraph 15.3.7, Permit Revocation or Voiding.
- c. Regardless of whether an ordinance violation has occurred, the Planning Director is authorized to order immediate removal of items and structures associated with the permitted use that the Director determines create a nuisance or detriment to public health or safety.

3. Non-Commercial Use Only

Uses authorized under a Limited Agriculture Permit shall be non-commercial only. Commercial activities are prohibited. Domestic animals authorized by a Limited Agriculture Permit shall be kept as pets or for personal use only.

4. Nuisance Prohibited

Uses authorized under a Limited Agriculture Permit shall not create a nuisance. Uses shall be conducted in a manner that does not disturb the use or enjoyment of adjacent properties. Odor generated shall not be perceptible at the property

boundaries, and noise generated shall not disturb people of reasonable sensitivity at the property boundaries. Only motion-activated lighting shall be used to light any limited agriculture area.

5. Public Health and Safety

Uses authorized under a Limited Agriculture Permit shall not create a detriment to public health or safety.

B. Domestic Chickens

1. Purpose

The purpose of this section is to authorize and provide standards for the keeping of domesticated chickens. It is intended to enable residents to responsibly keep a small number of female chickens on a non-commercial basis while limiting the potential adverse impacts on the surrounding neighborhood.

2. Definitions

"Chicken", "Chicken Coop", and "Chicken Pen" are defined in Sec. 16.3, Defined Terms.

3. Number and Type of Chickens Allowed

The maximum number of chickens allowed is ten (10) per lot, regardless of how many dwelling units are on the lot. Only female chickens are allowed. There is no restriction on chicken breeds.

4. Accessory to Single-Family Housing Types

Residents of single-family houses can keep chickens as authorized under this section. A limited agriculture permit shall not be issued for chickens at other housing types.

5. Personal Use Only

- a. Eggs, chicks, adult chickens, and processed chickens shall not be sold. Chicken manure and compost using chicken manure shall not be sold or otherwise distributed.
- b. Produce on which chicken manure from the permitted chickens has been used as fertilizer, or on which compost made with such manure has been used, shall not be sold.

6. Chicken Enclosures

A chicken coop and chicken pen shall be provided. Chickens shall be secured in the chicken coop during non-daylight hours. During daylight hours chickens can be located in the chicken pen and can be located outside of the pen in a securely fenced yard or chicken tractor/portable pen if supervised by an adult person.

7. Construction, Design, and Location for Coop and Pen

a. Location

Notwithstanding the location requirements of paragraph 5.4.1, Accessory Structures, chicken coops shall be located at least 15 feet from any property line or public right-of-way, and chicken pens shall be located at least five feet from any property line or right-of-way.

b. Coop

- (1) Except as required in paragraph 5.4.12B.7.a, Location, the chicken coop shall comply with the requirements of paragraph 5.4.1, Accessory Structures.
- (2) The coop shall be enclosed with solid material on all sides and have a solid roof and door(s).
- (3) The coop shall be at least 18 inches high, and provide at least three square feet of floor area per chicken.
- (4) The coop shall provide one square foot of window per 15 square feet of floor area, and vents as necessary to ensure adequate ventilation. If the floor area is less than 15 square feet, then at least one window measuring one foot by one foot shall be provided.
- (5) Doors shall be constructed so that they can shut and lock. Windows shall be constructed so they can shut.
- (6) Windows and vents shall be covered with wire that is 16-gauge or wider diameter with maximum spacing of one inch by one inch.

c. Pen

- (1) The chicken pen shall be constructed of wood or metal posts and wire fencing material that is 19-gauge or wider diameter with maximum spacing, overall or along the lower portion for graduated poultry fencing, of one inch by six inches.
- (2) The pen shall provide at least 10 square feet of area per chicken. The fence shall rise at least four feet above the ground, and be buried at least one foot in the ground.
- (3) The pen shall be covered with wire, aviary netting, or solid roofing.
- (4) The chicken coop shall comply with the requirements of Sec. 5.4, Accessory Uses and Structures. The coop shall be enclosed with solid material on all sides and have a solid roof and door(s). The coop shall be at least 18 inches high, and provide at least 3 square feet of floor area per chicken. The coop shall provide 1 square foot of window per 15 square feet of floor area, and vents as necessary to ensure adequate ventilation. The materials for each element, e.g., walls, roof, windows and doors, shall be uniform and in harmony with the surrounding area. Doors shall be constructed so that they can shut and lock. Windows shall be constructed so they can shut. Windows and vents shall be covered with wire that is 14 1/2-gauge or less with maximum spacing of 1 inch by 1 inch. The coop shall be impermeable to rodents, wild birds, and predators, including dogs and cats.

- d.** The chicken pen shall be constructed of wood or metal posts and wire fencing material that is 14 1/2-gauge or less with maximum spacing, overall or along the lower portion for graduated poultry fencing, of 1 inch by 6 inches. The pen shall provide at least 10 square feet of area per chicken. The fence shall rise at least

4 feet above the ground and be buried at least 1 foot in the ground. The pen shall be covered with wire, aviary netting, or solid roofing.

8. Maintenance

The chicken coop, chicken pen, and surrounding area shall be kept clean, dry, odor-free, and in a neat and sanitary condition at all times. All manure, uneaten feed, and other trash shall be removed in a timely manner and disposed of in a sanitary manner. The permittee is subject to, and shall comply with, the requirements of Chapter 70, Utilities, Article V, Stormwater Management and Pollution Control. The permittee shall take all necessary action to reduce the attraction of predators and rodents and the potential infestation of insects and parasites. Slaughter and other processing of chickens shall be conducted in accordance with Small Flock Management Resources guidance provided by the Poultry Science Division of the North Carolina Cooperative Extension/North Carolina State University College of Agriculture and Life Sciences. Slaughter shall not be visible from any adjacent property, public area, or right-of-way. If a chicken dies from causes other than slaughter, it shall promptly be placed into a plastic bag, which shall be closed securely and disposed of with household waste.

9. Living Conditions

The chicken coop shall provide adequate security, ventilation, and shelter from moisture and extremes of temperature. The chicken pen shall provide adequate security and sun and shade. Chickens shall have access to feed and clean water at all times, and such feed and water shall be inaccessible to rodents, wild birds, and predators. Chickens shall be provided adequate bedding in the chicken coop and perches are encouraged.

10. Waste Storage and Use

- a. No more than 2 cubic feet of chicken manure shall be stored, for use as unprocessed fertilizer. All other manure shall be disposed of or composted. All stored manure shall be completely contained in a waterproof container.
- b. Any compost using chicken manure shall be produced in an enclosed backyard composter.

Commentary: Be aware that unprocessed chicken manure may contain pathogens that can be transmitted to produce on which it is used as fertilizer. A proper mix of materials and maintaining a temperature of at least 131 degrees Fahrenheit for at least 3 consecutive days is necessary to destroy pathogens in compost.

Sec. 5.5 Temporary Uses

Commentary: Temporary uses should not be confused with permanent outdoor activities (for example, a car sales lot) that are only allowed in certain zones and require site plan approval, nor should they be confused with an outdoor display area (for example, a garden center that is part of a building supply store) that may be a part of a retail store and require site plan approval.

Some uses are considered temporary in nature and can be approved as temporary uses in any zoning district (unless otherwise provided below), subject to the following requirements in addition to requirements of Sec. 3.12, Temporary Use Permit. Additional restrictions regarding the operation of these uses may be imposed through the City or County code, as applicable.

5.5.1 In General

- A. The maximum allowed time period for a Temporary Use Permit is 45 days, unless otherwise specified below. A Temporary Use Permit can be renewed for an additional 45 days, unless otherwise specified below.
- B. No more than one permit and one renewal shall be issued for any temporary use on a property within a 12 month period, unless otherwise specified below.
- C. Unless otherwise specified below and regardless of whether a temporary use permit is required, a temporary use shall not be located in required parking, or landscaping or vegetated areas; shall not obstruct pedestrian or vehicular access or circulation; and shall not obstruct access to fire hydrants or connections.

5.5.2 Specific Temporary Uses

A. Carnivals

1. General

A carnival shall only operate between the hours of 8:00 a.m. and 10:00 p.m., Sunday through Thursday, and between the hours of 8:00 a.m. and 11:00 p.m., Friday and Saturday.

2. Location

Carnivals shall not be permitted in residential districts. All facilities associated with a carnival shall be located at least 100 feet from the property line of the closest residential property or use.

3. Permitted Timeframe

No carnival shall be permitted for any period longer than 10 days.

B. Christmas Tree Sales Lots

1. General

Christmas tree sales lots shall require a temporary use permit if located in a residential district.

2. Permitted Timeframe

No Christmas tree sales lot requiring a permit shall be permitted for any period longer than 60 days.

C. Circuses

1. Location

Circuses shall not be permitted in residential districts. All facilities associated with a circus shall be located at least 100 feet from the property line of the closest residential property or use.

2. Permitted Timeframe

Temporary Use Permits for a circus shall not be granted for any period longer than 10 days.

D. Construction Buildings

1. General

Construction buildings can be permitted as a temporary use incidental to construction occurring in accordance with a valid building permit.

2. Permitted Timeframe

Construction buildings shall be removed prior to the issuance of a final certificate of compliance for the construction project, or upon the expiration of the building permit associated with the construction project.

E. Land Clearing and Inert Debris Landfills (LCIDs)

1. General

LCIDs shall comply with all applicable local, State, and federal regulations.

2. Size

The total disposal area shall be less than two acres in size.

3. Permitted Timeframe

The permit shall be valid for five years from the date of issuance. One renewal of the permit, for a maximum of an additional five years from the original expiration of the permit, can be issued.

F. Farmers' Markets

A farmers' market can operate with a temporary use permit as follows:

- 1.** Unless prohibited within the committed elements of a development plan, farmers' markets are allowed within any non-residential zoning district, and within residential zoning districts on property used as an educational facility, place of worship, park, community service facility, or government facility.
- 2.** Temporary use permits are valid for one year and can be renewed on a yearly basis by providing the same documentation that demonstrates compliance with Ordinance standards as done with the original issuance.
- 3.** In addition to the requirements of Sec. 3.12, Temporary Use Permit, the following shall be required:
 - a.** On-site presence of a market manager during all hours of operation.
 - b.** All vendors shall be producers, as defined in Sec. 16.3, Defined Terms.

- c. All products sold shall be food or beverage products, farm products, or value-added farm products.
- d. Provisions for recycling and waste removal. All recycling and waste shall be removed from the premises by the termination of tear-down.
- e. Hours and days of operation:
 - (1) Hours of operation shall be allowed between 7 a.m. and 9 p.m. but shall not exceed five hours per day. One and one-half hours before and one and one-half hours after the hours of operation are permitted for set-up and tear-down.
 - (2) A market shall not operate more than two days per week.
 - (3) An additional day per week or two additional hours per day are permitted three times a year to accommodate holidays or special events.
- f. Signs: Signs are permitted as follows:
 - (1) Signs erected only during market hours:
 - (a) No sign permit is required.
 - (b) One sign per street frontage is allowed.
 - (c) The maximum sign area per sign is 24 square feet.
 - (d) Signs shall be set up only during the hours between the start of set-up and the end of tear-down.
 - (e) Sec. 11.3, Prohibited Signs, shall apply.
 - (2) Permanent signs:

Permanent signs shall comply with Article 11, Sign Standards, and shall be incorporated into the common signage plan of the overall development site hosting the market. If no common signage plan exists for the host site, a common signage plan shall be required.

4. Parking

- a. During hours of operation, the minimum motor vehicle parking requirements for outdoor markets, pursuant to paragraph 10.3.1A.1, Minimum, shall be provided. If the zoning district has no minimum parking requirement, then no minimum parking shall apply.
 - (1) Except as allowed via off-site parking pursuant to paragraph (2) below, all parking shall be on-site. Required parking spaces of the host property shall be permitted to count towards required market parking so long as a document signed by the property owner and market manager demonstrates that there will be no parking demand associated with the use of the host property for the same parking spaces during the hours of operation of the farmers' market.
 - (2) Off-site parking up to 500 feet away, measured from property line of the parking area to the property line of the market site, can satisfy parking requirements subject to the following:

- (a) Such parking areas shall be under the same control (by ownership or lease) as the host property or farmers' market. A copy of the deed or lease agreement shall be provided to demonstrate compliance with this requirement.
- (b) A pedestrian-safe route exists connecting the parking site and the market site, consisting of sidewalks, traffic-controlled crossings of right-of-way, with no crossing of freeways or major thoroughfares.

G. Manufactured Homes

1. Following a Fire or Natural Disaster that Causes an Existing Building to be Uninhabitable

a. General

Class A or B manufactured homes are permitted as temporary residences following a fire or natural disaster.

b. Location

Such manufactured homes shall be located to the rear of the site unless site conditions make such location impractical.

c. Permitted Timeframe

Temporary Use Permits for manufactured homes can be granted for the period of construction, but shall not be valid for longer than thirty days after a Certificate of Compliance is received for the permanent structure.

2. During Home Construction in the RR District

a. General

Class A, B, or C manufactured homes are permitted as temporary residences in the RR District while construction of a new dwelling is actively underway. A Class C manufactured home shall require certification by a Professional Engineer that it is safe and habitable in order to be permitted.

b. Location

Any manufactured homes used for this purpose shall be located to the rear of the site unless site conditions make such a location impractical.

c. Permitted Timeframe

The manufactured home shall not be permitted for periods longer than 12 months, though such permits may be renewed one time, if valid building permits have been issued for the site, to provide an additional 12 months of use on the site. The manufactured home shall be removed from the site when construction ceases, even if the permit has not expired.

3. For Custodial Care

a. General

Class A or B manufactured homes may be permitted as temporary accessory dwellings to provide custodial care.

b. Location

Manufactured homes used for this purpose shall only be permitted in residential districts on sites developed with a single-family residence. The manufactured home shall be located to the rear of the primary structure and shall maintain all required setbacks of the district.

c. Permitted Timeframe

- (1) The manufactured home shall not be permitted for periods longer than 24 months, but can be renewed for additional 24-month periods.
- (2) The manufactured home shall be removed once it is determined that custodial care is no longer required.

d. Approval Process

The following shall be provided with an application for custodial care:

- (1) A notarized document specifying that direct custodial relationship exists between the occupants of the manufactured home and the house.
- (2) A physician's note indicating custodial care is necessary.

H. Mobile Communication Towers

1. General

Mobile communication towers permitted as temporary uses shall not exceed 125 feet in height.

2. Permitted Purpose and Timeframe

A temporary use permit can be issued only for the following purposes and timeframes.

- a. Mobile communication towers associated with temporary events shall be permitted for no more than seven days. No extension shall be granted.
- b. For instances when an existing, freestanding WCF loses functionality due to damage to the facility, a mobile communication tower may be permitted for no more than 60 days. One extension for an additional 60 days is allowed. This shall not apply to government-owned mobile communication towers required due to a declared state of emergency pursuant to paragraph 5.3.3N.2, Exemptions.

I. Outdoor Sales

1. Residential

Garage or yard sales in residential districts shall not require a temporary use permit provided they comply with the following requirements:

a. General

- (1) No sales activities occur except in daylight hours on no more than two consecutive days.
- (2) No display or storage of goods occurs outside except on the day of the sale.

b. Permitted Timeframe

No more than four sales occur on any single site in any calendar year, with a minimum period between sales of three months.

2. Nonresidential

Commentary: For outdoor sales located within the public right-of-way, consult the regulations within the City of Durham Code of Ordinances.

- a. Temporary outdoor sales shall be limited to property within commercial zoning and design districts.
- b. Except for mobile food vendors in DD District, only one vendor shall occupy a parcel at one time unless a temporary use permit is issued for the vendor.
- c. The maximum area for the temporary use shall be 400 square feet, unless solely for sales of Christmas trees, pumpkins, or fireworks.
- d. A temporary use permit shall be required for temporary outdoor sales except for the following:
 - (1) Mobile food vendors within the DD District or on construction sites;
 - (2) Mobile vendors, other than those within the DD District or construction sites, that are occupying private property and set up once per day for a maximum of four hours;
 - (3) Mobile ice cream vendors;
 - (4) Outdoor displays in compliance with Sec. 7.5, Outdoor Display and Storage; or
 - (5) Sales of home grown produce.

J. Portable On-Site Storage on Residential Property

1. General

- a. A portable on-site storage unit is any container designed for the storage of personal property and for transport by commercial vehicle that is typically rented to owners or occupants of property for their temporary use. A portable on-site storage unit is not a building or structure.
- b. A portable on-site storage unit can be located anywhere on a residential property without a temporary use permit while the property is the job address listed on an active building permit issued by the Durham City-County Inspections Department.
- c. Except as authorized under paragraph J.1.b above, a portable on-site storage unit shall require temporary use permit under Sec. 3.12, Temporary Use permit, if it is located on a residential property for more than 30 days.

2. Location

a. Single-Family Residences

Except as authorized under paragraph J.1.b above, a portable on-site storage unit for a single-family residence shall be located in the driveway or in the side or rear yard at least five feet from any property line.

b. All Other Types of Residences

Except as authorized under paragraph J.1.b above, a portable on-site storage unit for any residential housing type other than a single-family residence shall be located in an on-site vehicular use area and shall not obstruct any drive aisle or block any required parking space.

3. Size

The longest dimension of a portable on-site storage unit, or the longest aggregate dimension of multiple units, shall not exceed 20 feet.

4. Permitted Timeframe

A temporary use permit for a portable on-site storage unit shall be limited to a maximum of 30 days. Such permit can be renewed one time for a maximum of 30 days provided renewal occurs prior to expiration of the original temporary use permit.

K. Public Facilities

1. General

Structures associated with government activities shall be incidental to a permanent use or building located on the site.

2. Location

Except for modular school classrooms, the temporary public facility can be located within street yards, but not within any required parking or landscape area. An all-weather surface shall be provided for access to the temporary public facility.

3. Permitted Timeframe

Except for modular school classrooms, the temporary public facility shall not be permitted for periods longer than three years, although the permit can be renewed once for up to an additional 24 months.

4. Modular School Classrooms

When modular classroom units are needed to accommodate additional enrollment at a public school facility, a temporary use permit can be issued subject to the following:

- a. Documentation provided by the applicant verifies the units are needed to accommodate additional student enrollment;
- b. Documentation provided by the applicant specifies the anticipated amount of time needed for the modular units;
- c. A stormwater impact analysis (SIA) provided by the applicant, to be reviewed and approved by the City Public Works Department, or the County Engineering Department, as applicable, shall be submitted when units are proposed on a pervious surface. Improvements determined necessary based upon an approved SIA shall be installed prior to receiving a Certificate of Compliance for the modular units;
- d. Documentation provided by the applicant that demonstrates the existing parking facilities can accommodate the additional classrooms, or additional parking spaces shall be provided, per Article 10, Off-Street Parking and Loading;
- e. The temporary use permit shall be valid for one year, and can be renewed on a yearly basis provided the same documentation demonstrating conformance to Ordinance requirements is submitted.

L. Real Estate Sales Offices and Model Homes

1. General

Temporary facilities used as real estate sales offices or model homes may be located within new subdivisions.

2. Location

Such facilities shall be required to meet all setback requirements of the underlying zoning district and shall not be used as residences.

3. Permitted Timeframes

A facility permitted as a temporary real estate sales office shall be removed upon completion of sales in the subdivision.

M. Special Events

Special events of a civic, religious, or non-profit nature shall include, but are not limited to, outdoor concerts, markets, and festivals. Such events shall not require a temporary use permit if located on public property.

N. Temporary Healthcare Structures

1. General

- a. Temporary healthcare structures shall comply with the provisions for such structures pursuant to NCGS 160A-383.5 or 153A-341.3, as amended.
- b. Connection to public or private water and sewer systems shall comply with all applicable City, County, and State regulations.

2. Permitted Timeframe

- a. Temporary healthcare structures are allowed for one 12-month period. The temporary use permit can be renewed on an annual basis as long as compliance with all applicable regulations is documented and a renewal of a doctor's certification is provided.
- b. Removal of the structure shall comply with NCGS 160A-383.5 or 153A-341.3, as amended.

O. Temporary Structures on Nonresidential Development or Residential Development with at Least 50 Units

1. General

Manufactured homes are permitted during construction.

2. Location

Such manufactured homes shall be located on the site and shall comply with all setback requirements of the district.

3. Permitted Timeframe

The temporary structure shall be permitted only during construction activities, but shall in no case be permitted for periods longer than 24 months, although such permits can be renewed one time to provide an additional 12 months of use on the site. The temporary structure shall be removed from the site when construction ceases, or the permit expires, whichever occurs first.

P. Tents

Tents used as temporary uses require permits from the fire marshal's office as well as a temporary use permit.

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Article 6 | District Intensity Standards

Sec. 6.1 District Intensity in General

6.1.1 Purpose

The district development standards of this Ordinance establish lot sizes and certain restrictions for all residential and nonresidential development. These standards allow for variety in housing and building types while striving to maintain the overall character of neighborhoods and commercial areas of Durham. Development standards established in this Ordinance are based on Durham's five planning tiers as established in the *Comprehensive Plan*. Standards in this section are specific to each district and are above and beyond the general standards for all districts enumerated in Article 7, Design Standards, through Article 13, Additional Requirements for Subdivisions. Separate standards are established to regulate residential and nonresidential development in each tier and for certain nonresidential districts. This approach to district and tier development standards implements the Comprehensive Plan and has several public benefits:

- A. It allows for development that is more sensitive to the environment and allows for the preservation of open and natural areas.
- B. It promotes quality site layout and energy-efficient development.
- C. It promotes affordable and life-cycle housing.
- D. It promotes development intensities that match existing and proposed infrastructure investments.
- E. It promotes infill development that is consistent in character and scale with established neighborhoods.
- F. It promotes compact land development that supports alternate transportation, such as bicycling, walking, mass transit.
- G. It promotes market-based development decisions while protecting shared public interests.

6.1.2 Flexible Development Tools by Plan Tier

The district intensity standards set forth in this Article provide for flexible development tools in each planning tier, as shown below:

Development Tool	Rural	Suburban	Urban	Compact Neighborhood	Downtown
Conservation Subdivision	✓	✓			
Variable Housing Types		✓	✓	✓	
Major Roadway Density Bonus		✓	✓		
Affordable Housing Bonus		✓	✓	✓	
Lot Averaging		✓	✓	✓	
Cluster Subdivision		✓	✓		
Variable Frontage and Building Types				✓	✓
Vertical Integration of Uses				✓	✓

Sec. 6.2 Residential Rural (RR) Development Intensity

6.2.1 Development Standards

A. Dimensional Standards

1. All residential development in the RR District shall meet the standards in the table below, except that, any legally established lot of record created prior to the effective date of this Ordinance may be developed with a single family residence subject to Sec. 8.4, Floodplain and Flood Damage Protection Standards, and Sec. 8.7, Watershed Protection Overlay Standards, and the availability of water and wastewater treatment systems.

Dimensional Standard	Rural Tier Watershed		Rural Tier Non-Watershed		Suburban Tier	
	Min.	Max.	Min.	Max.	Min.	Max.
Residential Density (units per acre)						
Conventional Subdivision	---	0.33	---	0.5	---	1.4
Conservation Subdivision	---	0.5	---	0.75	---	2.0
Open Space (% of gross area) ¹						
Conventional Subdivision	---	---	---	---	---	---
Conservation Subdivision	50	---	50	---	50	---
Lot Area ²	3 ac.	---	2 ac.	---	30,000 s.f.	---
Lot Width (feet) ²	200	---	150		100	---
Street Yard (feet) ²	50	---	50		50	---
Side Yard (feet) ²						
Minimum Each Side	25	---	12		12	---
Minimum Both Sides (total)	50	---	30		30	---
Rear Yard (feet) ²	50	---	25		25	---
Height (feet)	---	35	---	35	---	35

¹ Please see Sec. 12.5, Recreation Land, for additional land dedication requirements that may apply.

² For conservation subdivision dimensional requirements, see below.

2. Within a conservation subdivision:
 - a. The minimum street yard shall be eight feet.
 - b. No minimum side yard shall apply; however, a minimum building separation of 10 feet shall apply.
 - c. Rear yards shall be those indicated for conventional subdivisions in the table in paragraph 6.2.1A.1 above.
 - d. Minimum lot areas for conservation subdivisions shall be approved by the County Health Department for individual wastewater treatment systems. Where public or community wastewater systems are approved to serve the development, no minimum lot size or width shall apply.
3. Additional height is permitted for non-farm structures at a rate of one additional foot for every one foot of additional setback provided. In no event shall the structure be more than 45 feet in height.

- B. Development in the Rural Villages of Bahama and Rougemont as designated in the *Comprehensive Plan* can use the Suburban Tier dimensional standards subject to Sec. 8.4, Floodplain and Flood Damage Protection Standards, and Sec. 8.7, Watershed Protection Overlay Standards, and the availability of water and wastewater treatment systems.
- C. **Accessory Structure Requirements (City Only)**
 - 1. In addition to the accessory structure requirements set forth in Sec. 5.4, Accessory Uses and Standards, the following accessory structures shall maintain a minimum 50-foot setback from all property lines.
 - a. New farm buildings and equestrian facilities; and
 - b. Pens, chicken coops, corrals, or similar enclosures where livestock are kept.
 - 2. Livestock shall be kept in pens, chicken coops, corrals, or similar enclosures.

Commentary: *The Durham City Code of Ordinances considers the accumulation of refuse and debris a public nuisance pursuant to Sec. 26-179, Accumulation of refuse and debris declared public nuisance; abatement.*

6.2.2 Permitted Housing Types

Only Single-Family Detached Houses, as described in paragraph 7.1.2, and manufactured homes shall be permitted.

6.2.3 Residential Density

Residential density shall not exceed the maximum densities set forth in paragraph 6.2.1A, Dimensional Standards.

6.2.4 Conservation Subdivision

A. Purpose

The conservation subdivision shall be established for the following purposes:

- 1. To provide flexibility of design in order to promote environmentally sensitive and efficient uses of the land;
- 2. To preserve in perpetuity unique or sensitive natural resources such as groundwater, floodplains, wetlands, streams, steep slopes, woodlands and wildlife habitat;
- 3. To preserve important historic and archaeological sites;
- 4. To permit clustering of houses and structures on less environmentally sensitive soils which will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development;
- 5. To reduce erosion and sedimentation by minimizing land disturbance and removal of vegetation in residential development;
- 6. To promote interconnected greenways and corridors throughout the community;
- 7. To promote contiguous green space with adjacent jurisdictions;
- 8. To encourage interaction in the community by clustering houses and orienting them closer to the street, providing public gathering places and encouraging use of parks and community facilities as focal points in the neighborhood;

9. To encourage street designs that reduce traffic speeds and reliance on main arteries;
10. To promote construction of landscaped walking trails and bike paths conveniently located both within the subdivision and connected to neighboring communities, businesses and facilities to reduce reliance on automobiles;
11. To conserve scenic views from public roadways and reduce perceived density; and
12. To protect prime agricultural land and preserve farming as an economic activity.

B. Applicability of Regulations

1. This conservation subdivision option is available as a use by right subject to subdivision approval in accordance with Sec. 3.6, Subdivision Review; and in accordance with the standards set forth in paragraph 6.2.4A, Purpose, and paragraph 6.2.4H, Primary and Secondary Conservation Areas.
2. As required under Sec. 3.6, Subdivision Review, a conservation subdivision shall conform to the requirements of this Ordinance, including Article 8, Environmental Protection, and other development-related ordinances; except that the requirements of this section shall supersede any conflicting ordinance provisions.
3. Spray irrigation for the treatment of wastewater within a conservation subdivision shall require a major special use permit under Sec. 3.9, Special Use Permit, unless the area to be irrigated is a primary conservation area that is farmland or agricultural land.

C. Ownership of Development Site

The tract of land to be subdivided may be held in single and separate ownership or in multiple ownership. If held in multiple ownership, however, the site shall be developed according to a single plan with common authority and common responsibility.

D. Density Calculation

Maximum density in a conservation subdivision shall be determined by multiplying the gross area of the tract of land, including all areas typically excluded from density calculations in Article 8, Environmental Protection, by the maximum gross density for the site as defined in subsection 6.2.1A, Dimensional Standards.

E. Mass Grading

Mass grading is allowed in conservation subdivisions that receive public water/sewer service or use community wastewater treatment facilities or package treatment plants. It is prohibited in all other conservation subdivisions.

F. Open Space Requirements

1. Relationship to other open space requirements

Except for paragraph 7.2.5, Ownership and Management of Open Space, the requirements of Sec. 7.2, Open Space, do not apply to conservation subdivisions.

2. Amount of open space

The amount of open space shall be 50% of total gross area as required under Sec. 6.2, Residential Rural (RR) Development Intensity, and shall be apportioned as set forth below in paragraph G, Primary and Secondary Conservation Areas and Other Open Space.

3. Ownership

Open space shall be held in common ownership or dedicated to the public or a land trust or similar conservation-oriented non-profit organization rather than platted as part of individual private lots, and shall be subject to the requirements of paragraph 7.2.6, Ownership and Management of Open Space.

4. Notwithstanding the above requirements, area within required riparian buffers can be used to satisfy any open space requirement.

G. Application Requirements**1. Submittal Requirements**

In addition to all subdivision application materials required in accordance with Sec. 3.6, Subdivision Review, the applicant shall submit a site analysis map. The complete site analysis map shall first be presented for discussion at the pre-application conference required under paragraph 3.2.2, Pre-Application Conference.

2. Site Analysis Map

The purpose of the site analysis map is to ensure that the important site features have been adequately identified prior to the creation of the site design, and that the proposed open space will meet the requirements of this section. The site analysis map shall include the following features:

- a. Property boundaries;
- b. All streams, rivers, lakes, wetlands and other hydrologic features;
- c. Topographic contours of no less than 10-foot intervals unless a more precise vertical scale is available;
- d. All primary and secondary conservation areas labeled by type (see paragraph H. below);
- e. General vegetation characteristics;
- f. General soil types and areas suitable for installation of on-site wastewater treatment systems;
- g. The planned location of protected open space;
- h. Existing roads and structures; and
- i. Potential connections with existing open space and trails.

H. Primary and Secondary Conservation Areas and Other Open Space**1. Primary Conservation Areas**

At least 80 percent of the required open space in a conservation subdivision shall consist of primary conservation areas.

Commentary: Because 50 percent of the total gross area in a conservation subdivision must be open space under paragraph 6.2.1, Development Standards, 40 percent of the total gross area must be primary conservation areas.

The following are considered primary conservation areas and shall be included within the required open space in the order of preference listed below. *Secondary*

conservation areas and other open space can be included only after *primary* conservation areas comprise 80 percent of required open space.

- a. Special Flood Hazard Areas and Future Conditions Flood Hazard Areas;
- b. Riparian buffers along all perennial and intermittent streams;
- c. Wetlands protected by the Army Corps of Engineers or the North Carolina Department of Environmental Quality and any provided or required buffers;
- d. Lakes, ponds, and other water bodies, excluding created stormwater management facilities;
- e. Areas at least 5,000 contiguous square feet in size with any natural slopes greater than 25%;
- f. Existing forests (meeting the standards in paragraph 8.3.1D, Preserved Tree Coverage, except any that conflict with the provisions of this section), at least one contiguous acre in size, in which healthy hardwood trees at least 10 inches in diameter at breast height comprise at least 50 percent of the area;
- g. Wildlife corridors, wildlife habitats, and other sites identified in the *Durham County Inventory of Important Natural Areas, Plants and Wildlife (Inventory)* or adopted plans;
- h. Greenways, rail trails, and other open space identified in adopted plans;
- i. Historic sites or structures currently designated in, or eligible for, the National Register of Historic Places;
- j. Sites identified in the *Durham Architectural and Historic Inventory*;
- k. Sites identified in the *Durham County Archaeological Inventory* and other identified archeological sites, including cemeteries and burial grounds;
- l. Sites at least five contiguous acres in size identified by the City, County, State, or federal government as farmland or agricultural land that is prime, unique, or of statewide or local importance; and
- m. Viewsheds from designated federal and North Carolina Scenic Byways.

2. Secondary Conservation Areas

The following are considered secondary conservation areas and shall be included within the required open space in the order of preference listed below if additional space is still required after all primary conservation areas have been included:

- a. Existing forests (meeting the standards in paragraph 8.3.1D, Preserved Tree Coverage, except any that conflict with the provisions of this section), at least 12,000 contiguous square feet in size, in which healthy hardwood trees at least 10 inches in diameter at breast height comprise at least 50 percent of the area;
- b. Areas with any natural slope greater than 20%, unless identified as primary conservation areas;
- c. Buffers in excess of Ordinance requirements around any primary conservation area;

- d. Individual existing healthy trees greater than 18 inches in diameter at breast height; and
- e. New or existing improved pedestrian trails that are not identified as primary conservation areas or located in other conservation areas and that do not negatively impact other conservation areas. Such trails can be located in utility easements only if all utilities in the easements are buried, and in such cases only the improved trails, and not the easements, shall be considered secondary conservation areas.

3. Other Open Space

The following areas can be included within the required open space if additional space is still required after all primary and secondary conservation areas have been included:

- a. Any land used for agricultural purposes that is not a primary conservation area;
- b. Naturally vegetated areas, or areas re-vegetated to appear naturally vegetated, that are not primary or secondary conservation areas;
- c. Playing fields surfaced with natural turf;
- d. Golf courses identified by the City or County as "green" due to use of best management practices, excluding club houses, parking areas, and other impervious surfaces;
- e. Stormwater management facilities engineered as bioretention areas or wetlands, including easements for such facilities, can comprise a maximum of 10 percent of required open space.

Sec. 6.3 Residential Suburban (RS) Development Intensity

6.3.1 Development Standards

A. Dimensional Standards

1. All residential development in the RS districts shall meet the standards in the table below. For illustrations, lot dimensions, and required yards for each housing type, see Sec. 7.1, Housing Types.

Dimensional Standard	RS-20		RS-10		RS-8		RS-M		
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max. without Development Plan	Max. with Development Plan (see paragraph 3.5.6)
Residential Density (units per acre)	---	2.0	---	4.0	---	5.0	---	8.0	18.0
Open Space(% of gross area) ¹									
Conventional Subdivision	---	---	15	---	15	---	18	---	---
Cluster Subdivision	---	---	15	---	15	---	18	---	---
Site Area (acres)									
Conventional Subdivision	---	---	---	---	---	---	---	---	---
Cluster Subdivision	4	---	4	---	4	---	---	---	---
Site Width (feet)	---	---	---	---	---	---	200	---	---
Lot Area (square feet)									
Conventional Single-Family Detached	20,000	---	10,000	---	8,000	---	5,000	---	---
Other Housing Types	See Sec. 7.1, Housing Types								
Height (feet)	---	35	---	35	---	35	---	35	---

¹ Please see Sec. 12.5, Recreation Land, for additional land dedication requirements that may apply.

2. The maximum residential density does not apply to actions listed under paragraph 3.6.2, Actions Exempt from Subdivision Requirements. Where this maximum does apply, density can be increased in accordance with paragraph 6.3.3B, RS-M District Major Roadway Density Bonus, or Sec. 6.6, Affordable Housing Bonus. Other than these options, the maximum density shown cannot be exceeded even though the use of an alternative housing type may impose smaller lot size requirements.
3. For cluster subdivisions in the RS-20, RS-10, and RS-8 districts, the lot size reduction would be added to the minimum open space requirement.
4. For both conventional and cluster subdivisions in the RS-M District open space requirements also apply to the development standards for apartments.
5. Minimum lot area for conventional, single-family detached housing types can be reduced in accordance with paragraph 6.3.3C, Lot Averaging.
6. Additional height in the RS-20, RS-10, and RS-8 districts is permitted at a rate of one additional foot for every one foot of additional setback provided. In no event shall the structure be more than 45 feet in height.
7. For projects in the RS-M District, additional height is permitted at a rate of one additional foot for every one foot of additional setback provided, if shown on a development plan meeting the requirements of paragraph 3.5.6, Development Plan.

8. Minimum lot area may be higher as required by the County Health Department for individual wastewater treatment systems or “Package Plant” style wastewater treatment systems.

B. RS-20 District Accessory Structure Requirements (City Only)

1. In addition to the accessory structure requirements set forth in Sec. 5.4, Accessory Uses and Structures, the following accessory structures shall maintain a minimum 50-foot setback from all property lines:
 - a. New farm buildings and equestrian facilities; and
 - b. Pens, chicken coops, corrals, or similar enclosures where livestock are kept.
2. Livestock shall be kept in pens, chicken coops, corrals, or similar enclosures.

Commentary – *The Durham City Code of Ordinances considers the accumulation of refuse and debris a public nuisance pursuant to Sec. 26-179, Accumulation of refuse and debris declared public nuisance; abatement.*

6.3.2 Permitted Housing Types

Residential uses allowed pursuant to Sec. 5.1, Use Table, shall be limited to the housing types permitted in accordance with the following table. For illustrations, lot dimensions, and required yards for each housing type, see Sec. 7.1, Housing Types.

Housing Type	RS-20	RS-10	RS-8	RS-M
Single-Family Detached	✓	✓	✓	✓
Zero Lot Line House		✓	✓	✓
Patio house		✓	✓	✓
Semi-Attached House		✓ ¹	✓ ¹	✓
Duplex				✓
Townhouse				✓
Multiplex				✓
Apartment				✓

¹ Cluster subdivision only; see Sec. 6.7, Cluster Subdivision.

6.3.3 Residential Density

A. Maximum Residential Density

Residential density shall not exceed the maximum densities set forth in paragraph 6.3.1A, Dimensional Standards.

B. RS-M District Major Roadway Density Bonus

An increase in the maximum residential density of one unit per acre is allowed for all parcels in the RS-M District, or as authorized elsewhere within the Ordinance, if at least one of the following conditions is met:

1. Parcels maintain at least 500 feet of frontage on a major thoroughfare that is not a full or limited control-of-access facility.
2. Parcels maintain at least 500 feet of frontage on a service road for a full or limited control-of-access facility, and the development utilizes the service road for at least one access point pursuant to paragraph 12.2.4, External Access Required.

C. Lot Averaging

Lot area averaging, as more specifically set forth in Sec. 7.1, Housing Types, is permitted, provided that:

1. The maximum reduction allowed is 15% of the minimum lot area;
2. The average area of all lots in the subdivision meets or exceeds the minimum lot area; and
3. The overall density of the subdivision does not exceed the maximum permitted residential density.

Commentary: Some lots in a proposed conventional subdivision can be reduced in area by up to 15% (for example, a 10,000 SF lot could be reduced to 8,500 SF), provided that other lots exceed 10,000 SF and the overall average lot area is 10,000 SF or greater.

D. Application of Density Requirements for Single-Family Development

For single-family developments, the density requirements in paragraph 6.3.1A, Dimensional Standards, do not apply if the project does not require subdivision or site plan approval.

Sec. 6.4 Residential Urban (RU) Development Intensity

6.4.1 Development Standards

A. Dimensional Standards

1. All residential development in the RU districts shall meet the standards in the table below. For illustrations, lot dimensions, and required yards for each housing type, see Sec. 7.1, Housing Types.

	RU-5		RU-5(2)		RU-M		
Dimensional Standard	Min.	Max.	Min.	Max.	Min.	Max. without a Development Plan	Max. with a Development Plan (see paragraph 3.5.6)
Residential Density (units per acre)							
Project Under 4 Acres	---	8.0	---	8.0	---	12.0	20.0
Project 4 Acres or Greater	6.0	8.0	6.0	8.0	8.0	12.0	20.0
Open Space (% of gross area) ¹	5	---	5	---	6	---	
Site Area Site Width Lot Area	See Sec. 7.1, Housing Types						
Height (feet)	---	35	---	35	---	55	

¹Please see Sec. 12.5, Recreation Lands, for additional requirements that may apply.

¹Please see Sec. 12.5, Recreation Lands, for additional requirements that may apply.

2. Maximum density can increase in accordance with paragraph 6.4.3, Residential Density, and/or Sec. 6.6, Affordable Housing Bonus. Other than these options, the maximum density shall not be exceeded even though the use of an alternative housing type may impose smaller lot size requirements.
3. Additional height in the RU-5 and the RU-5(2) districts is permitted at a rate of one additional foot for every one foot of additional setback provided. In no event shall the structure be more than 45 feet in height.
4. If the project in the RU-M District is on at least a four acre lot, the maximum height can be increased up to 75 feet through the issuance of a minor special use permit.

6.4.2 Permitted Housing Types

Residential uses allowed pursuant to Sec. 5.1, Use Table, shall be limited to the housing types permitted in accordance with the following table. For illustrations, lot dimensions, and required yards for each housing type, see Sec. 7.1, Housing Types.

Housing Type	RU-5	RU-5(2)	RU-M
Single-Family Detached	✓	✓	✓
Zero Lot Line House	✓	✓	✓
Traditional House	✓	✓	✓
Patio house	✓	✓	✓
Semi-Attached House	✓	✓	✓
Duplex		✓	✓
Townhouse	✓ ^{1,2}	✓ ²	✓ ²
Multiplex			✓
Apartment			✓

¹Cluster subdivision only, see Sec. 6.7.

²See also paragraph 6.4.3D, Townhouse transitional use, where applicable.

6.4.3 Residential Density

A. Major Roadway Density Bonus Area

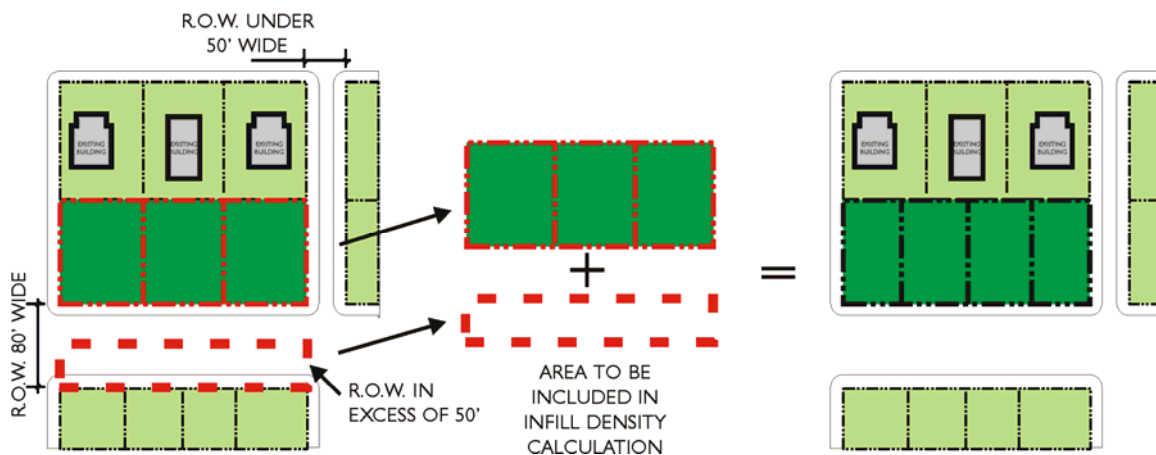
For projects located adjacent to streets with a right-of-way over 50 feet in width, the area for the project may be calculated to include that portion of right-of-way in excess of 50 feet for purposes of determining density.

Sample Calculation: A project includes recombination of 3 lots measuring 75 by 100 feet, and lies adjacent to a right-of-way measuring 80 feet in width.

$75 \times 100 = 7,500 \text{ SF} \times 3 \text{ existing lots} = 17,500 \text{ SF}$ (standard calculation)

Frontage of 225 feet \times 30 feet (in excess of 50-foot ROW) = 6,750 SF Bonus Area

Density Allocation = 24,250 SF (.56 ac.) multiplied by 7.4 units per acre = 4.1 units (4 lots)



B. Thoroughfare Density Bonus

Projects located along major or minor thoroughfares with rights-of-way greater than 50 feet in width can develop as townhouses, using the dimensional provisions of paragraph 7.1.8, Townhouses, so long as the average width of the townhouse lots is at least 20 feet. Projects developed utilizing this option shall meet all of the requirements of Sec. 6.8, Infill Development in Residential Districts, where applicable; except that the requirements regarding minimum lot width established in paragraph 6.8.2, Lot Width, shall not apply.

C. Lot Averaging

Lot area averaging, as more specifically set forth in Sec. 7.1, Housing Types, is permitted, provided that:

1. The maximum reduction allowed is 15% of the minimum lot area;
2. The average area of all lots in the subdivision meets or exceeds the minimum lot area; and
3. The overall density of the subdivision does not exceed the maximum permitted residential density.

D. Townhouse Transitional Use

Sites located immediately between and adjacent to nonresidential and single-family residential uses can develop as townhouses, using the dimensional provisions of paragraph

Sec. 6.4 Residential Urban (RU) Development Intensity

- 7.1.8, Townhouses, to serve as a transitional use. Projects developed utilizing this option shall meet all of the requirements of Sec. 6.8, Infill Development in Residential Districts, where applicable, except that the requirements regarding minimum lot width established in paragraph 6.8.2, Lot Width, shall not apply.
- E.** For single-family and two-family developments, the density requirements in paragraph 6.4.1A, Dimensional Standards, do not apply if the project does not require subdivision or site plan approval.

Sec. 6.5 Residential Compact (RC) Development Intensity

6.5.1 Development Standards

A. Dimensional Standards

1. All residential development in the RC District shall meet the standards in the table below. For illustrations, lot dimensions, and required yards for each housing type, see Sec. 7.1, Housing Types.

Dimensional Standard	RC	
	Min.	Max.
Residential Density (units per acre)		
Core Area	12.0	53.0
Support Area	6.0	20.0
Open Space (% of gross area) ¹		
Core Area	1.0	---
Support Area	2.0	---
Site Area	5.0	---
Lot Area	See Sec. 7.1, Housing Types	
Height (feet)		
Core Area	24	75
Support Area	---	45

¹ Please see Sec. 12.5, Recreation land, for additional land dedication requirements that may apply.

2. Maximum density can be increased in accordance with paragraph 6.5.3, Residential Density, and/or Sec. 6.6, Affordable Housing Bonus.
3. Maximum height in the RC Support Area can be increased to 50 feet if the building is not within 150 feet of the perimeter of the Compact Neighborhood Tier where the Tier adjoins any property zoned and used for residential purposes.

B. Core and Support Area

1. Where a Compact Neighborhood Plan exists, the core and support area shall be as defined in such plan.
2. Where no plan exists, the following distances shall apply:
 - a. The core area shall be considered any site or portion of a site in the Compact Neighborhood Tier that lies no more than 1,250 feet from the station platform, measured in a straight line from the proposed or existing station platform; and
 - b. The support area shall be considered any site within the Compact Neighborhood Tier that lies outside the core area.

6.5.2 Permitted Housing Types

Residential uses allowed pursuant to Sec. 5.1, Use Table, shall be limited to the housing types permitted in accordance with the following table. For illustrations, lot dimensions, and required yards for each housing type, see Sec. 7.1, Housing Types.

Housing Type	RC	
	Support Area	Core Area
Single-Family Detached	✓	1
Zero Lot Line House	✓	1
Traditional house	✓	1
Patio House	✓	1
Semi-Attached House	✓	1
Duplex	✓	1
Townhouse	✓	✓
Multiplex	✓	✓
Apartment	✓	✓

¹ May be permitted pursuant to a Neighborhood Protection Overlay or through Sec. 6.8, Infill Development in Residential Districts.

6.5.3 Residential Density

A. Maximum Residential Density

Residential density shall not exceed the maximum densities as set forth in paragraph 6.5.1A, Dimensional Standards, unless a project provides for vertical integration of uses with at least 65% of the total floor area allocated to residential uses and at least 75% of the ground floor allocated for nonresidential uses. Projects which meet this requirement may increase their residential density by up to 50%.

B. Lot Averaging

Lot area averaging, as more specifically set forth in Sec. 7.1, Housing Types, is permitted, provided that:

1. The maximum reduction allowed is 15% of the minimum lot area;
2. The average area of all lots in the subdivision meets or exceeds the minimum lot area; and
3. The overall density of the subdivision does not exceed the maximum permitted residential density.

- C. For single-family and two-family developments, the density requirements in paragraph 6.5.1A, Dimensional Standards, do not apply if the project does not require subdivision or site plan approval.

Sec. 6.6 Affordable Housing Bonus

6.6.1 Applicability

- A. This program can be utilized at the time of site plan or subdivision for new projects with a minimum of 15 dwelling units, or for projects adding at least 15 dwelling units to an existing development in any zoning district where residences are permitted.
- B. Projects must commit to providing affordable housing dwelling units in the amount of at least 15% of the maximum number of units permitted with the base density.

Example #1: If the zoning of a five-acre project allows 60 units/ acre, then 300 dwelling units are permitted. To qualify for a density bonus, at least 45 of the 300 dwelling units shall qualify as affordable housing dwelling units.

- C. Projects in which 100% of the residences are affordable housing dwelling units shall not be eligible for the affordable housing density bonus unless the project is within the Compact Neighborhood Tier.

6.6.2 Bonus Program

A. Residential Density

For the purpose of calculating the bonus residential density within projects utilizing the affordable housing bonus, the “base density” is the maximum density allowed in the zoning district prior to applying any potential bonuses, and multiplied by the gross acreage of the tract of land, including all areas typically excluded from density calculations in Article 8, Environmental Protection. The resulting number shall be rounded down to the nearest whole number.

1. Suburban and Urban Tiers

For each affordable housing dwelling unit that is constructed, a density bonus of one additional dwelling unit can be constructed beyond the base density.

Example #2: The project is in the Urban Tier, and 15% (i.e.: 45 units) of the 300 maximum units qualify as affordable housing dwelling units affordable. Thus, an additional 45 dwelling units are allowed above the maximum 300 units, totaling 345 dwelling units.

2. Compact Neighborhood Tier

For each affordable housing dwelling unit that is constructed, a density bonus of three additional dwelling units can be constructed beyond the base density.

Example #3: The five-acre project with a maximum allowed density of 60 units/acre allows for 300 units. Of the 300 units, 15% (or 45 units), qualify as affordable housing dwelling units. Thus, an additional 135 dwelling units are allowed above the 300 unit maximum, totaling 435 dwelling units.

B. Height

When the affordable housing bonus is utilized, additional height is allowed as follows:

- 1.** In all zoning districts except the Design Districts, an additional 15 feet shall be allowed.
- 2.** Within the Compact Design District, additional height shall be allowed in accordance with paragraph 6.12.4A.2, Building Height and Massing.
- C.** All of the affordable housing dwelling units shall be located within the overall project boundary. Affordable units shall be incorporated throughout the project, and shall not be distinguishable from market-rate units through location, grouping, or exterior design.
- D.** In single-family and duplex developments, required minimum lot sizes and yard requirements for lots internal to the project can be reduced up to 20% in order to incorporate the additional units.
- E.** Units added through this program shall not increase the amount of open space otherwise required for the project.
- F.** An annual report shall be provided by the project developer or manager to the Housing and Community Development Director for sites within the City's jurisdiction, or to the County Manager for sites within the County's jurisdiction, which identifies the incomes of persons residing in the affordable housing dwelling units, and the rents or initial sales price being charged, to verify the units qualify as affordable housing dwelling units.
- G.** Compliance measures can be required at the time of approval, including but not limited to contracts, restrictive covenants, deed restrictions, and stipulated penalties.

Sec. 6.7 Cluster Subdivision

6.7.1 Purpose

To encourage innovation in residential subdivision design, cluster subdivisions shall be permitted providing for more efficient layout of lots, streets, and utilities, for the preservation of open space and recreation areas, and for the protection of unique site features and scenic vistas. Cluster subdivisions shall permit reductions in lot area in exchange for equal amounts of open space on a one-to-one basis, subject to the following standards.

6.7.2 Minimum Site Area

The minimum acreage required for a cluster subdivision shall be four acres.

6.7.3 Maximum Density

The maximum density shall not exceed the maximum density permitted in the base district.

6.7.4 Housing Types

A variety of housing types shall be permitted in a Cluster Subdivision in accordance Sec. 7.1, Housing Types.

6.7.5 Open Space

- A. The subdivision shall include designated common open space as referenced below.

District	Open Space
RS Districts	See paragraph 6.3.1A
RU Districts	See paragraph 6.4.1
RC Districts	See paragraph 6.5.1A

- B. Open space in a clustered subdivision shall be established in accordance with Sec. 7.2, Open Space.

6.7.6 Perimeter Treatment

Property on the edge of cluster developments shall either:

- A. Be set aside in open space that includes a buffer with an opacity of 60%, as set forth in Article 9, Landscaping and Buffering; or
- B. Be platted as single-family residential lots as follows:
1. When adjacent to, or directly across a public right-of-way from, property that is not a cluster subdivision or is a conventional lot within a cluster subdivision, then the lot shall be platted with conventional subdivision dimensional requirements.
 2. When adjacent to, or directly across a public right-of-way from, property that is a cluster subdivision, and the adjacent property is open space or is a lot with reduced dimensional requirements due to clustering provisions of this or previous ordinances, then the lot can be platted with cluster subdivision dimensional requirements.

Sec. 6.8 Infill Development in Residential Districts

Commentary: In order to preserve the basic “feel” of a street, it is important that new construction complements existing construction and respects existing design elements that help define the public space.

6.8.1 Applicability

A. Suburban Tier

1. This section shall apply to any multifamily development located on a site of less than four acres that is surrounded on all sides by single-family residential development.
2. Neighborhood-specific modifications to the regulations listed in this section may be developed using the “Neighborhood Protection Overlay (-P)” pursuant to Sec. 4.6, Neighborhood Protection Overlay (-P).

B. Urban Tier

1. This section shall apply to any new project or modification of any existing building located on a site of less than four acres in a residential district.
2. Neighborhood-specific modifications to the regulations listed in this section may be developed using the “Neighborhood Protection Overlay (-P)” pursuant to Sec. 4.6, Neighborhood Protection Overlay (-P).

C. Compact Neighborhood Tier

This section can be used to permit the development of single-family detached houses as a transition to adjacent single-family uses in the Core Area of the RC District.

D. Nonresidential Development in Residential Districts

Infill standards shall not apply to the following uses.

1. Outdoor storage areas;
2. Outdoor sales;
3. Loading bays or loading areas.

6.8.2 Lot Width

The minimum width of a lot shall be the smaller of:

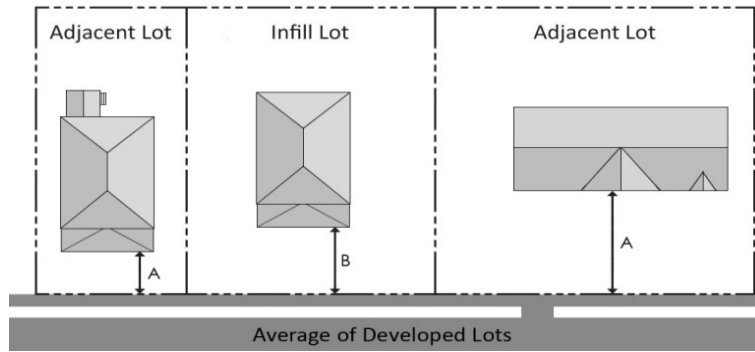
1. The average width of the adjacent lots fronting on the same linear block; or
2. The median of the widths for all other lots fronting on the same linear block.

6.8.3 Yards

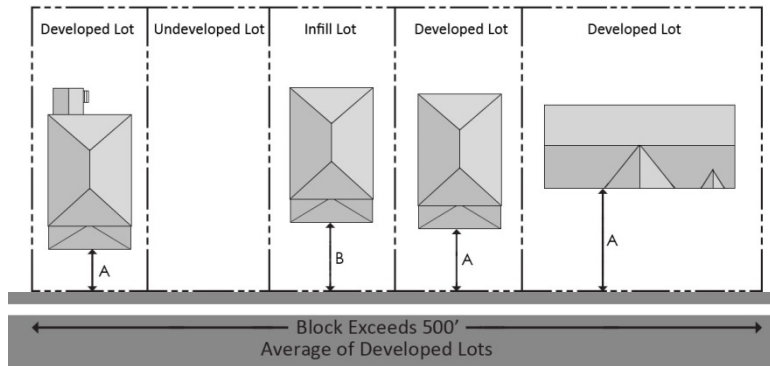
A. Street Yards

The minimum street yard (B) requirement shall be:

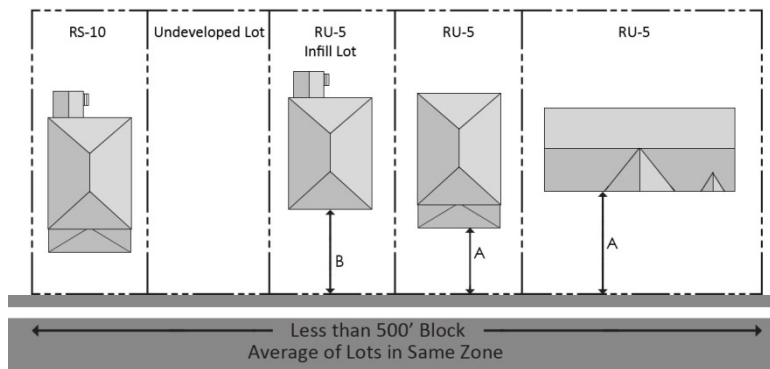
1. The average street yard of the two adjoining parcels (A) (as defined by the distance between the primary structure on each property and the edge of the right-of-way), if both parcels are developed and share the same zoning district as the property proposed for development; or



2. The average street yard of all developed parcels (A) (as defined by the distance between the primary structure on each property and the edge of the right-of-way) in the same block face as the property proposed for development, if either of the adjoining parcels is not developed and the block exceeds 500 linear feet; or



3. The average street yard for all developed parcels (A) (as defined by the distance between the primary structure on each property and the edge of the right-of-way) in the same block face as the property proposed for development that also have the same zoning designation as the property proposed for development, if either of the adjoining parcels is not developed and the block is less than 500 linear feet.



4. Corner Lots

- a. Each street yard shall be determined separately.
 - b. At the discretion of the applicant, the minimum street yard shall be either:
 - (1) The average street yard of the nearest two developed parcels (as defined by the distance between the primary structure on each property and the edge of the right-of-way) along the same block face and within the same zoning district; or
 - (2) The base zoning district requirement.
5. Alleys shall not be considered to create a new block. Parcels on the opposite side of an alley shall be consider adjacent or along the same block face, as applicable.

B. Side Yards

1. If the side wall of an existing structure is located on or within three feet of the property line, windows or other openings in the new structure that would allow for visibility into the side yard of the adjacent lot shall not be allowed unless a minimum 10-foot building separation is provided. Windows that do not allow visibility into the side yard of the adjacent lot, such as clerestory windows or translucent windows, shall be allowed.
2. Porte cocheres can extend into the side yard when incorporated into the design and construction of the primary structure, but in no case shall they be permitted to be closer than three feet from the property line.

C. Landscaping

Infill development shall continue the pattern of street yard trees that has been established on all lots within 150 feet of the property unless an intervening street exists prior to that distance, in which case the street location shall define the terminating point of the required street tree pattern. When new trees are planted, they shall be a variety that, at maturity will be similar in height, width, and form to existing trees in the context area.

6.8.4 Buildings**A. Context Area**

The context area for measurement of standards in this section shall be based on any principal buildings located on lots within 150 feet of the property line of the proposed site. Where an intervening street exists within this 150-foot distance, the street shall be considered the furthest extent of the context area (no measurements are required on neighboring blocks).

B. Building Width

New construction shall not exceed the average building width for existing residential structures in the context area by more than 25%, unless a building articulation of at least six feet in depth at a point that mimics the average building width in the context area is provided.

C. Building Height

The maximum height shall not exceed the height of the lesser of either of the following:

1. The maximum height permitted by the zoning district; or
2. More than 14 feet taller than the height of any adjacent structure, except for those portions of the new or modified structure that lie more than 25 feet from the adjacent structure.

D. Main Entrance

Except for single-family and two-family residential structures, every principal structure shall have a main entrance on a street other than an alley. On corner lots, the main entrance can face either street or can be oriented toward the corner. For buildings that have more than one main entrance, only one main entrance shall be required to face a street.

E. Garages, Access, and Parking

1. Where an alley access is provided and developed, all vehicular access shall be taken from the alley.
2. When a garage entrance faces a street other than an alley, a single garage entrance shall be no more than 22 feet in width.
3. The construction material of the garage shall match that of the primary structure. This shall not apply to if the primary structure is a single-family or two-family structure.

6.8.5 Vehicular Use Areas

1. Residential

Infill residential uses shall locate on-site parking to conform to the predominant location of parking in the context area established in subsection 6.8.4A, Context Area, or to the rear of the structure.

2. Nonresidential

- a. On-site parking facilities shall not be located in any required street yard.
- b. If parking facilities are located to the rear of the subject structure, a rear entrance to the structure shall be provided.

Sec. 6.9 Nonresidential and Group Living Development in Residential Districts

6.9.1 Dimensional Standards

- A. Nonresidential and group living development in residential districts shall comply with the dimensional standards in the following table:

Development Standard	RURAL		SUBURBAN		URBAN		COMPACT	
	Min.	Max.	Min.	Max.	Min.	Max.	Min.	Max.
Lot Area (square feet)	3 ac.	---	15,000	---	5,000	---	5,000	---
Lot Width (feet)	100	---	90	--	50	---	50	---
Open Space (% of gross area) ¹	---	---	10	---	3	---	---	---
Core Area	---	---	---	---	---	---	1.0	---
Support Area	---	---	---	---	---	---	3.0	---
Street Yard								
Feet from ROW	50	---	25	---		20 ¹		15 ¹
% of Frontage	---	---	---	---	60	---	80	---
Side Yard (feet)								
Min Each Side	12	---	10	---	6	---	0	---
Min Both Sides (total)	30	---	24	---	15	---	0	---
Rear Yard (feet)	25	---	25	---	25	---	25	---
Building Coverage (%) ²	--	9	---	60	---	70	---	70
Height (feet)	---	45	---	45	---	45	---	45

¹ Street yard may be modified subject to paragraph 6.8.3A, Street Yards.

² May be further restricted by watershed regulations in accordance with paragraph 8.7.2B, Impervious Surface Limits.

B. Open Space Exemptions

- Principal uses listed in paragraph 5.2.4F, Parks and Open Areas, and paragraph 5.2.4J, Utilities, are exempt from the open space requirements in paragraph 6.9.1A above.
 - Development sites of an acre or less are exempt from the open space requirements in the table in paragraph 6.9.1A, above.
 - Recreational open space pursuant to paragraph 7.2.3A is not required for nonresidential and group living development in residential districts.
- C. Development in the Rural Villages of Bahama and Rougemont as designated in the *Comprehensive Plan* can use the Suburban Tier dimensional standards subject to Sec. 8.4, Floodplain and Flood Damage Protection Standards, Sec. 8.7, Watershed Protection Overlay Standards, and the availability of water and wastewater treatment systems.
- D. Development in Suburban Transit Areas as designated in the *Comprehensive Plan* can use the Compact Tier Support Area development standards subject to the availability of infrastructure to support them.

6.9.2 Building Separation

Where multiple structures are found on a single platted lot, such structures shall be separated by at least the following distances:

Standard	Separation Required (feet)
Building wall has primary entrance or exit	25
Building wall has secondary entrance or exit	20
Building wall has no entrance or exit	10

6.9.3 Recreation Areas

Recreation areas, such as a clubhouse, swimming pool, tennis, volleyball, or basketball court, shall be oriented internally to the development or along major roadways and away from adjacent residential development.

Sec. 6.10 Nonresidential District and Group Living Development Intensity

6.10.1 Nonresidential and Group Living Development Standards

A. Rural Tier

All nonresidential and group living development in the Rural Tier as designated in the *Comprehensive Plan* shall comply with the standards in the table below.

1. Standards for All Districts

Dimensional Standard	CN		CG		I	
	Min.	Max.	Min.	Max.	Min.	Max.
Site Area (acres)	2	---	3	---	10	---
Project Floor Area (square feet)	---	20,000	---	50,000	---	---
Lot Width (feet)	100	---	150	---	250	---
Street Yard (feet)	25	---	25	---	40	---
Side Yard (feet)	25	---	25	---	50	---
Rear Yard (feet)	25	---	25	---	50	---
Building Coverage (%) ¹	---	23	---	35	---	30
Height (feet)	---	25	---	25	---	50

¹ Building coverage may be further restricted by the impervious surface requirements of paragraph 8.7.2B, Impervious Surface Limits.

- a. Minimum side yards in the CN and CG districts can be reduced to 15 feet if adjacent to a nonresidential district or use.
- b. Additional height in the I District, up to 145 feet, is allowed if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- c. A development within the CN District, with new project floor area over 5,000 square feet, no development plan, and residential zoning districts adjacent (including directly across a public right-of-way) to two or more property lines requires a minor special use permit pursuant to Sec. 3.9, Special Use Permit. The applicant shall hold a neighborhood meeting pursuant to paragraph 3.2.3, Neighborhood Meeting, unless it previously held one for the development at issue.

B. Suburban Tier

All nonresidential and group living development in the Suburban Tier as designated in the *Comprehensive Plan* shall comply with the standards in the tables below.

1. Standards for the CN, OI, and CG Districts

Dimensional Standard	CN		OI		CG	
	Min.	Max.	Min.	Max.	Min.	Max.
Site Area (square feet)	5,000	---	20,000	---	20,000	---
Project Floor Area (square feet)	---	20,000	---	---	---	---
Lot Width (feet)	50	---	60	---	100	---
Street Yard (feet)	25	---	25	---	25	---
Side Yard (feet)	15	---	20	---	25	---
Rear Yard (feet)	25	---	25	---	25	---
Building Coverage (%) ¹	---	60	---	60	---	60
Height (feet)	---	35	---	50	---	50

¹ Building coverage may be further restricted by the impervious surface requirements of paragraph 8.7.2B, Impervious Surface Limits.

- a. Side yards in the OI and CG districts can be reduced by up to 50% if adjacent to a nonresidential district or use, or a railroad right-of-way.
- b. Rear yards in the table above can be reduced by up to 50% if adjacent to a nonresidential district or use, or a railroad right-of-way.
- c. Additional height in the OI District, up to 145 feet, is allowed if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- d. A development within the CN district, with new project floor area over 5,000 square feet, no development plan, and residential zoning districts adjacent (including directly across a public right-of-way) to two or more property lines requires a Minor Special Use Permit pursuant to Sec. 3.9, Special Use Permit. The applicant shall hold a neighborhood meeting pursuant to paragraph 3.2.3, Neighborhood Meeting, unless it previously held one for the development at issue.

2. Standards for the SRP, IL, and I Districts

Dimensional Standard	SRP		IL		I	
	Min.	Max.	Min.	Max.	Min.	Max.
Site Area (square feet)	---	---	25,000	---	30,000	---
Lot Width (feet)	300	---	100	---	150	---
Street Yard (feet)	100	---	40	---	40	---
Side Yard (feet)	100	---	30	---	50	---
Rear Yard (feet)	100	---	25	---	40	---
Building Coverage (%) ¹	---	15	---	60	---	65
Height (feet)	---	120	---	50	---	90

¹ Building coverage may be further restricted by the impervious surface requirements of paragraph 8.7.2B, Impervious Surface Limits.

- a. Within the SRP District:
 - (1) The street yard shall only apply to yards adjacent to public rights-of-way.
 - (2) Side and rear yards can be eliminated if adjacent to a railroad right of way, or can be reduced to 30 feet if adjacent to permanently protected open space and the building separation is at least 150 feet.

- (3) No parking, loading, or storage shall be permitted within the required yard areas.
 - (4) The maximum building coverage shall not apply to parking structures.
 - b. Side yards in the IL and I districts can be reduced by 10 feet if adjacent to a nonresidential district or use.
 - c. Rear yards in the IL and I districts can be reduced by up to 50% if adjacent to a railroad right-of-way.
 - d. Additional height, up to 145 feet, is allowed if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
3. Development in the Rural Villages of Bahama and Rougemont, as designated in the *Comprehensive Plan*, can use the Suburban Tier dimensional standards subject to Sec. 8.4, Floodplain and Flood Damage Protection Standards, Sec. 8.7, Watershed Protection Overlay Standards, and the availability of water and wastewater treatment systems.
4. **(County Only) SRP-C District**
- a. **Establishment of the District**
 - (1) A minimum of 25 contiguous acres shall be required for an initial establishment of the zoning for a SRP-C District;
 - (2) At least 75% of the district's perimeter must be adjacent to property zoned SRP, and such property shall be considered the supporting SRP District;
 - (3) No SRP District may support more than one SRP-C district;
 - (4) Additions shall be contiguous to the existing SRP-C District and may be made in increments of any size so long as the 75% perimeter minimum for the entire zoning area is maintained; and
 - (5) The maximum acreage of a SRP-C District shall be no more than one-third the contiguous acreage of the supporting SRP district.
 - b. **Mix of Uses**

The SRP-C District shall consist of a mix of uses from at least three of the following use categories, and pursuant to Sec. 5.1, Use Table: residential, public and civic, commercial, office, and industrial uses.
 - c. **Dimensional Standards**

The dimensional standards, and supplemental requirements to the dimensional standards, are as follows.

Dimensional Standard	SRP-C	
	Min.	Max.
Street Yard (feet)	20	--
Side Yard (feet)	20	--
Rear Yard (feet)	20	--
Building Coverage (%) ¹	--	60
Height (feet)	--	300

¹ Building coverage may be further restricted by the impervious surface requirements of paragraph 8.7.2B, Impervious Surface Limits.

- (1) Minimum street yards do not apply to rights-of-way internal to the SRP-C District.
- (2) Minimum side and rear yards shall only apply when adjacent to property not zoned SRP or SRP-C.
- (3) No parking, loading or storage shall be permitted within the required yard areas.
- (4) Buildings with frontage along a public right-of-way shall have a maximum podium height equal to the width of the right-of-way. Additional height is permitted with upper story step-backs, as measured from the right-of-way line; where x feet of step-back allows 2x feet of additional height.
- (5) Buildings proposed adjacent to property zoned residential shall have a maximum height of 100 feet. Additional height may be approved with approval of a major special use permit pursuant to Sec. 3.9, Special Use Permit.
- (6) The maximum building coverage shall not apply to parking structures.
- (7) The maximum building coverage shall be calculated based upon the gross area of the contiguous SRP-C District.

d. Additional Standards

- (1) Minimum ground floor glazing for building facades facing rights-of-way shall be 50% for all nonresidential uses and 30% for residential uses.
- (2) Parking decks shall provide openings for each level of the facade facing a right-of-way at a minimum rate of 30% of the façade.
- (3) Standards of Sec. 7.4, Outdoor Lighting, shall not apply so long as the maximum illumination at the edge of an SRP-C district does not exceed the limits pursuant to paragraph 7.4.3, Standards.

C. Urban Tier

All nonresidential and group living development in the Urban Tier, as designated in the *Comprehensive Plan*, shall comply with the standards in the tables below.

1. Standards for the CI District

Dimensional Standard	CI	
	Min.	Max.
Lot Area	---	20,000
Street Yard from Back of Curb (feet)	5	15
Side Yard (feet)	---	10
Rear Yard (feet)	10	---
Height (feet)	---	35

- a. Buildings greater than 20,000 square feet are allowed in the CI District if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- b. Additional height in the CI District, up to 50 feet, is allowed if the building uses upper story step-backs at a ratio of one to one.
- c. Minimum ground floor glazing for building facades facing street frontages shall be 60% for all nonresidential uses and 50% for residential uses.
- d. Where the right-of-way line is further from the curb than the maximum street yard, the right-of-way line shall be the required maximum street yard; structures shall not be allowed in the public right-of-way.

2. Standards for the CN, OI, and CG Districts

Dimensional Standard	CN		OI		CG	
	Min.	Max.	Min.	Max.	Min.	Max.
Site Area (square feet)	5,000	---	20,000	---	20,000	---
Project Floor Area (square feet)	---	20,000	---	---	---	---
Lot Width (feet)	50	---	50	---	100	---
Street Yard ¹ From ROW (feet)	---	15	---	15	---	15
Side Yard (feet)	10	---	10	---	15	---
Rear Yard (feet)	25	---	25	---	25	---
Building Coverage (%) ²	---	60	---	60	---	60
Height (feet)	---	35	---	90	---	50

¹Street yard may be modified using the provisions of paragraph 6.10.1E, Street Yard Variations.

²Building coverage may be further restricted by the impervious surface requirements of paragraph 8.7.2B, Impervious Surface Limits.

- a. Structure(s) shall be oriented such that at least one of the following standards is met:
 - (1) The longest building facade is parallel to and within the maximum street yard; or
 - (2) The street-facing building facade occupies at least 60% of the total street frontage for the development.
- b. Rear yards can be reduced by up to 50% if adjacent to a railroad right-of-way.
- c. Additional height in the OI and CG Districts, up to 145 feet, is allowed if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- d. A development within the CN District with new project floor area over 5,000 square feet, no development plan, and residential zoning districts adjacent (including directly across a public right-of-way) to two or more property lines requires a Minor Special Use Permit pursuant to Sec. 3.9, Special Use Permit. The applicant shall hold a neighborhood meeting pursuant to paragraph 3.2.3, Neighborhood Meeting, unless it previously held one for the development at issue.

3. Standards for the IL and I Districts

Dimensional Standard	IL		I	
	Min.	Max.	Min.	Max.
Site Area (square feet)	5,000	---	25,000	---
Lot Width (feet)	50	---	100	---
Street Yard From ROW (feet)	---	20 ¹	40	---
Side Yard (feet)	15	---	40	---
Rear Yard (feet)	25	---	40	---
Building Coverage (%)	---	60	---	65 ²
Height (feet)	---	50	---	90

¹ Street yard may be modified using the provisions of paragraph 6.10.1E, Street Yard Variations.

² Building coverage may be further restricted by the impervious surface requirements of paragraph 8.7.2B, Impervious Surface Limits.

- a. In the IL District, structure(s) shall be oriented such that at least one of the following standards is met:
 - (1) The longest building facade is parallel to and within the maximum street yard; or
 - (2) The street-facing building facade occupies at least 60% of the total street frontage for the development.
- b. Rear yards can be reduced by up to 50% if adjacent to a railroad right-of-way.
- c. Additional height, up to 145 feet, is allowed if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.

D. Compact Neighborhood Tier

All nonresidential and group living development in the Compact Neighborhood Tier, as designated in the *Comprehensive Plan*, except development within CD districts, shall comply with the standards in the tables below.

1. Standards for the CI District

Dimensional Standard	CI	
	Min.	Max.
Lot Area	---	20,000
Street Yard from Back of Curb (feet)	5	15
Side Yard (feet)	---	10
Rear Yard (feet)	10	---
Height (feet)	---	35

- a. Buildings greater than 20,000 square feet are allowed in the CI District if approved through a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- b. Additional height in the CI District, up to 50 feet, is allowed if the building uses upper story step-backs at a ratio of one-to-one.

- c. Minimum ground floor glazing for building facades facing street frontages shall be 60% for all nonresidential uses and 50% for residential uses.
- d. Where the right-of-way line is further from the curb than the maximum street yard, the right-of-way line shall be the required maximum street yard; structures shall not be allowed in the public right-of-way.

2. Standards for the CN and OI Districts

Dimensional Standard	CN		OI	
	Min.	Max.	Min.	Max.
Project Floor Area (square feet)	---	20,000	---	---
Lot Width (feet)	50	---	50	---
Street Yard ¹				
From ROW (feet)	---	15	---	15
Side Yard (feet)	10	---	10	---
Rear Yard (feet)	15	---	15	---
Height (feet)	---	35	---	120

¹ Street yard may be modified using the provisions of paragraph 6.10.1E, Street Yard Variations.

- a. Structure(s) shall be oriented such that at least one of the following standards is met:
 - (1) The longest building facade is parallel to and within the maximum street yard; or
 - (2) The street-facing building facade occupies at least 60% of the total street frontage for the development.
- b. Additional height in the OI District, up to 145 feet, is allowed if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- c. Height in the OI District shall be capped at 45 feet for any structures located within 150 feet of the perimeter of the Compact Neighborhood Tier where the Tier adjoins residentially used and designated property.
- d. A development within the CN District with new project floor area over 5,000 square feet, no development plan, and residential zoning districts adjacent (including directly across a public right-of-way) to two or more property lines requires a minor special use permit pursuant to Sec. 3.9, Special Use Permit. The applicant shall hold a neighborhood meeting pursuant to paragraph 3.2.3, Neighborhood Meeting, unless it previously held one for the development at issue.

3. Standards for the CG and IL Districts

Dimensional Standard	CG		IL	
	Min.	Max.	Min.	Max.
Lot Width (feet)	50	---	50	---
Street Yard ¹				
From ROW (feet)	---	15	---	15
Side Yard (feet)	10	---	15	---
Rear Yard (feet)	15	---	15	---
Height (feet)	---	90	---	50

¹ Street yard may be modified using the provisions of paragraph 6.10.1E, Street Yard Variations.

- a. Structure(s) shall be oriented such that at least one of the following standards is met:
 - (1) The longest building facade is parallel to and within the maximum street yard; or
 - (2) The street-facing building facade occupies at least 60% of the total street frontage for the development.
- b. Additional height in the CG District, up to 145 feet, is allowed if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- c. Height shall be capped at 45 feet for any structures located within 150 feet of the perimeter of the Compact Neighborhood Tier where the Tier adjoins residentially used and designated property.
- d. Subject to the restriction in paragraph 6.10.1D.3.c above, OI uses allowed in IL districts located in the Compact Neighborhood Tier shall have a maximum height limit of 60 feet permitted by right. Additional height up to 75 feet is allowed if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.
- e. Subject to the restriction in paragraph 6.10.1D.3.c above, and notwithstanding paragraph 6.10.1D.3.d above, hotel, motel, and extended stay uses; places of worship; government facilities (excluding correctional facilities) and lodges and clubs allowed in IL districts located in the Compact Neighborhood Tier shall have a maximum height limit of 80 feet permitted by right. Additional height up to 95 feet is allowed if approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit.

E. Street Yard Alternatives

A new structure or modifications to an existing structure shall not be required to conform to the street yard requirements of the district in the following circumstances:

1. Where 50% or more of the lots on the same linear block as the lot in question are developed with less than the required street yard, the average setback of the buildings on the developed lots on the block with less than the required street yard shall be observed as the minimum setback for a new structure;

2. Where the lot on which the new structure is proposed is between two adjacent existing developed lots with less than the required street yard, the average setback of the buildings of both adjacent lots shall be observed as the minimum street yard;
3. Where a linear block of less than 500 feet is split into more than one zoning district, the zoning district with the most frontage shall determine the minimum street yard setback. However, this provision shall not apply if the street right-of-way is less than 50 feet wide and property on the opposite side of the street is residentially used or zoned, in which case the provisions of paragraph 6.8.3A, Street Yards, shall be applied;
4. In the Urban and Compact Neighborhood tiers, excluding Design Districts, the applicable street yard of a multiple-frontage lot shall be applied to the frontage with the predominant orientation of existing structures along the blockface. The other frontage shall be considered a side or rear as applicable; or
5. In the Urban and Compact Neighborhood tiers, except within CD districts, the maximum street yard shall be considered a minimum street yard for the following primary uses:
 - a. Fuel sales.
 - b. Vehicle sales.

6.10.2 Residential Development in Nonresidential Districts

A. Permitted Housing Types and Other Residential Development

1. The following residential development shall be allowed as indicated with a "✓".

Zoning District	Residential Development Allowed				
	Single-Family Detached House (paragraph 7.1.2)	Townhouse (paragraph 7.1.8)	Multiplex (paragraph 7.1.9)	Apartment (paragraph 7.1.10)	Upper Story Residential
CI, CG, OI	--	✓	✓	✓	✓
CN	✓	✓	✓	✓	✓
(County Only) SRP-C	--	✓	✓	✓	✓

2. For a Single-Family Detached House, the following zoning district development standards pursuant to paragraph 6.2.1, Development Standards, or paragraph 7.1.2B, Development Standards, as applicable, shall apply:

Tier of the Development Site	Applicable Zoning District Development Standard
Rural	RR (watershed and non-watershed, as applicable)
Suburban	RS-M
Urban	RU-M
Compact Neighborhood	RC

3. For all other residential development, the development standards applicable to the housing type, or the base zoning district for upper story residential, shall apply.

4. Height for Housing Types

- a. The maximum height for the housing type shall be as follows:

Tier of the Development Site	Maximum Height, in feet	
	Single-Family Detached House	All other Allowed Housing Types
Rural and Suburban	35	Height as allowed for the RS-M District per paragraph 6.3.1A, Dimensional Standards
Urban	35	Height as allowed for the RU-M District per paragraph 6.4.1A, Dimensional Standards
Compact Neighborhood	35	Height as allowed for the RC District per paragraph 6.5.1A, Dimensional Standards

- b. For Single-family detached house, additional height is allowed at a rate of one foot per one foot of additional setback provided, with a maximum height of 45 feet.
5. Street level residential development shall not be allowed in the CI District, except for townhomes.
6. (County Only) The development standards for the SRP-C District shall apply to all residential development.

B. Residential Density

1. The residential density shall be based only on that portion of the tract dedicated to the residential use and the maximum residential density (shown as units per acre) allowed shall be as shown in the table below:

District	Rural	Suburban	Urban	Compact
CI	---	---	14 ^{1,2}	14 ^{1,2}
CN	0.2	8 ^{1,3}	11 ^{1,2}	14 ^{1,2}
OI	---	11 ^{1,3}	14 ^{1,2}	18 ^{1,2}
CG	0.2	11 ^{1,3}	14 ^{1,2}	18 ^{1,2}
(County Only) SRP-C	---	20 ⁴	---	---

¹ Density can be increased through use of the Sec. 6.6, Affordable Housing Bonus.

² Density can be increased through use of the options available under paragraph 6.4.3, Residential Density.

³ For multifamily development, density can be increased through use of paragraph 6.3.3B, RS-M District Major Roadway Density Bonus.

⁴ Density in the SRP-C District can be calculated based upon the gross area of the contiguous district, including areas typically precluded from consideration for density in Article 8, Environmental Protection.

2. Density limits shall not apply to upper story residential units in the CI District.

C. Open Space

Open space shall be provided in all residential developments within nonresidential districts pursuant to the table below. (County Only) Required open space within the SRP-C District can be provided anywhere within the contiguous district area.

Tier	Open Space
Rural and Suburban	18% of gross area
Urban	6% of gross area
Compact Neighborhood	Core – 2% of gross area Support – 5% of gross area

Sec. 6.11 Planned Districts

6.11.1 Purpose

Planned districts shall be established to allow for design flexibility and to encourage efficient use of land and public services and high quality design. These regulations are intended to allow innovative development that is integrated with proposed adjacent uses and compatible with existing patterns of nearby development.

6.11.2 General Requirements

- A.** A development plan meeting the requirements of paragraph 3.5.6, Development Plan, shall be required as part of the zoning map change application to any planned district, except in the UC and UC-2 districts as indicated below.
- B.** The initial zonings to establish the UC and UC-2 districts on each campus, which shall be initiated by the appropriate governing body for each university/college campus, shall not require a development plan, though the university or college can submit a development plan providing additional details and restrictions beyond minimum Ordinance requirements, for all or parts of the area associated with the initial zoning map change. A basic zoning map change application shall be required for the initial zoning map change, along with documentation on the availability of adequate parking and a limited surcharge fee to cover public notification requirements.
- C.** Except in the MU District, uses shall be permitted only in the location shown on the approved development plan. Development of the property shall not begin until a site plan has been approved for that portion of the property. Site plans shall be reviewed for conformance with an approved development plan. Should alterations or changes represent a substantial departure from the approved plan, an amendment is required. The same procedures as required for the original approval shall be required for development plan amendments.
- D.** Unless alternative standards are explicitly established in the provisions below, all relevant standards and provisions of this Ordinance shall apply to development within any planned district.

6.11.3 Planned Development Residential (PDR)

A. Uses

- 1.** The primary use allowed within the PDR District shall be residences, including manufactured homes.
- 2.** Manufactured homes shall be permitted only where they have been expressly indicated on the approved development plan. Manufactured house subdivisions and parks shall be designated as such on the development plan and show lot layouts and the orientation of the house to the street in the development plans.
- 3.** Nonresidential uses allowed in the PDR District shall be limited to those uses listed in the Sec. 5.1, Use Table. Nonresidential uses can be approved subject to the use limitations established in Sec. 5.3, Limited Use Standards, and the following conditions.

- a. Except for Public and Civic uses pursuant to Sec. 5.1, Use Table, the development shall provide for at least 100 dwelling units. When both nonresidential and residential uses are proposed:
 - (1) The dwelling units can be separate structures from the nonresidential uses or located in the same structure as the nonresidential uses.
 - (2) To assure that commercial and office uses are supportive of the PDR project, Certificates of Compliance shall be issued for at least 25% of the residential units before Certificates of Compliance are issued for the commercial or office uses. This requirement shall not apply when residences are located in the same building as the commercial or office uses.
- b. Nonresidential acreage shall not be included in any calculations of residential density.
- c. The building heights, location, orientation, and building-to-building spacing, shall be specified in the development plan.
- d. Nonresidential uses shall be located with street access deemed adequate by the City Transportation Department.
- e. Nonresidential square footage shall promote a range of services for residents. Except for Public and Civic uses pursuant to Sec. 5.1, Use Table, the nonresidential component within a PDR shall not exceed 50,000 square feet and shall be devoted to more than one business.

B. Dimensional Requirements

1. Site Area

- a. The minimum area required for the initial approval of the zoning district shall be as follows:
 - (1) Within the Urban Tier, a minimum of two contiguous acres shall be required.
 - (2) Within the Suburban Tier, a minimum of four contiguous acres shall be required.
- b. Additions to an existing approved PDR can be made in increments of any size.

2. Minimum Lot Area

- a. No minimum lot area shall be required to be specified.
- b. Lot areas described on a development plan may be increased by the appropriate State agency or County Health Department in order to ensure adequate waste treatment.

C. Intensity

1. Residential Density

The specific maximum density in units per acre, other than the areas proposed for nonresidential development and areas precluded from consideration for density in paragraphs 8.3.1C.5, Tree Coverage Calculation Exclusions ; 8.4.4, Development in

Special Flood Hazard Areas and Future Conditions Flood Hazard Areas; 8.5.9, Lots and Density Credits; and 8.8.5, Density Credits, shall be included in the application. The allowable density shall be consistent with the land use designation shown in the *Comprehensive Plan*.

2. Nonresidential Intensity

The maximum nonresidential intensity shall reflect the CN and/or OI intensity, as appropriate, consistent with Sec. 6.10, Nonresidential District Development Intensity, for the tier in which the project is located.

3. Height

Maximum building height shall be 90 feet. Any building over 35 feet shall be identified on the development plan submitted for approval.

D. Building Orientation

1. Single-Family Detached

The building envelope for each lot shall be shown on the recorded plat.

2. Building Separation

- a. Unless alternative building separation standards are established in Article 7, Design Standards, the minimum building separation shall be as follows:

Height of Taller Building	Distance Between Vertical Projections
Under 35 feet	10 feet
35.1 to 40.0 feet	30 feet
40.1 to 50.0 feet	60 feet
50.1 to 85.0 feet	70 feet
85.1 to 90.0 feet	80 feet

To determine the separation required, the vertical projections for each building shall be drawn from that point on each building that is horizontally closest to the other building.

- b. Manufactured homes in parks shall maintain a distance of at least 16 feet between other manufactured homes. Added on rooms, porches, and other structures attached to the manufactured home shall be considered part of the manufactured home.
- c. The governing body can reduce separations after consideration of the general bulk and scale in comparison with nearby development. Such modification shall only occur in conjunction with the approval of the development plan.

3. Building Articulation

In order to provide diversity and to avoid long rows of attached dwellings, no more than four contiguous townhouse units shall be allowed with the same setback. Variations in setback must be at least three feet.

E. Yards

1. Street Yards

No building shall be erected, reconstructed, altered or moved nearer to the property line along the street on which such building faces than is indicated in the following table.

Residential Density	Minimum Street Yard
1.0 to 8.0 units per acre	8 feet
8.1 to 16.0 units per acre	15 feet
More than 16.0 units per acre	25 feet

2. Side and Rear Yards

a. Residential Uses

No minimum side or rear yards shall be required although building separations established above shall be maintained.

b. Nonresidential Uses

When a retail or office component of the PDR shares a common boundary with a residential component of the PDR, side and rear yards of at least 30 feet shall be provided between the nonresidential and residential areas. This requirement shall not apply if the residential uses are within the same building as the retail or office uses.

Interpretation: PUD/PDR site plans approved prior to 1994 continue to use the property line setbacks for PUD/PDRs approved prior to the effective date of the Merged Durham Zoning Ordinance (1/1/94). These setbacks are called out either dimensionally on the site plans or in a special conditions box.

F. Open Space

1. Required open space shall be provided based upon the density of the project as follows:

Residential Density	Percent of Gross Area
0 to 3.00 units per acre	15
3.01 to 6.00 units per acre	16
6.01 to 10.00 units per acre	17
10.01 to 16.00 units per acre	18
16.01 to 25.00 units per acre	20

2. Uses of open space shall be as defined in Sec. 7.2, Open Space.

G. Landscaping

Blank walls visible from the street shall be buffered with plantings. Landscaping improvements meeting the same requirements as the landscaping required for vehicle use areas with exposure to the street established in Sec. 9.8, Vehicular Use Area Landscaping, shall be provided for all blank walls exceeding 50 feet in length.

H. Parking

At least 30% of the parking spaces required for nonresidential uses shall be located to the side or rear of nonresidential structures within any PDR.

I. Sidewalks

In addition to meeting all of the requirements of Sec. 12.4, Pedestrian and Bicycle Mobility, sidewalks shall be provided between the retail and office uses and the dwelling units within any PDR.

6.11.4 University and College Districts (UC and UC-2)

Unless specifically differentiated, all requirements that refer to the UC District apply to both the UC and UC-2 districts.

A. Uses

1. The primary use allowed in a UC district shall be colleges and universities and such ancillary uses as are typically associated with a university or college that are customary and subordinate to the primary educational function of the university or college use, including dormitories, stadia, enclosed arenas, auditoriums, and museums.
2. Other uses shall be limited to those uses listed in paragraph 5.1.2, Use Table, that can demonstrate a direct relationship to an academic use, such as university medical center uses, including teaching hospitals, medical schools, nursing schools, biomedical research facilities, and support space.

B. Zoning Map Change

1. Initial Establishment of the Zoning District

A university or college may elect to have all or parts of its campus covered in the initial establishment of the zoning district, so long as those areas are covered by the appropriate campus master plan. For the UC District, no areas of the campus that were not under the direct control of the university prior to January 1, 2002, shall be included in the initial establishment of the zoning district. For the UC-2 District, no areas of the campus that were not under the direct control of the university or college prior to January 1, 2010, shall be included in the initial establishment of the zoning district.

2. Subsequent Zoning Map Change

Any property included as part of a university or college campus in a campus master plan can be included in a UC district. A campus master plan shall be submitted to the Planning Department prior to any zoning map change submittal. Such campus master plans shall be viewed as illustrative in nature and can be updated, in whole or in part, at any time.

C. Campus Areas

1. Transitional Use Area

A Transitional Use Area shall be designed to establish standards at the edges of the campus that minimize any adverse impacts of proposed development on adjacent properties.

- a. For the UC District, standards shall be applicable to a 150-foot wide area at the boundaries of the UC District. Where applicable, the Transitional Use Area shall be measured from the midpoint of public right-of-way adjacent to the edge of the district. If a public right-of-way is wider than 200 feet, and contains no existing or planned structures, then a Transitional Use Area shall not be required.
- b. For the UC-2 District, standards shall be applicable to a 75-foot-wide area at the boundaries of the UC-2 District. Where the edge of the zoning district is within or adjacent to a public right-of-way, the Transitional Use Area shall be measured from the midpoint of the right-of-way. Where the edge of the zoning district is not within or adjacent to a right-of-way, the Transitional Use Area shall be measured from the property line or exact location of the edge of the district.

2. Internal Campus

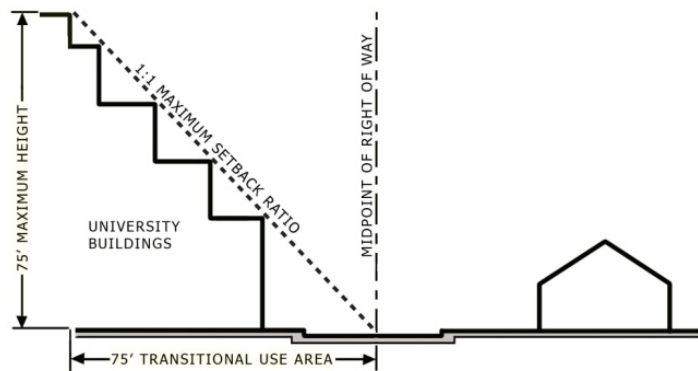
- a. All areas of each university or college within a UC district that are not included within a Transitional Use Area shall be considered to be within the Internal Campus.
- b. Within the Internal Campus, only limited regulations shall apply, as indicated below.

D. Height

1. Transitional Use Area

The maximum height of a structure within the Transitional Use Area shall be regulated as follows:

- a. Within the UC District, building height shall not exceed 150% of the average height of buildings on adjacent properties (including those directly across a public right-of-way), to a maximum of 100 feet. In calculating the average height for the adjacent buildings, the following considerations shall be included: maximum permitted heights for developable vacant lots; the taller of buildings in front or behind each other; and included within 150 feet of the perimeter transition area. Heights shall not be increased beyond 150% of average surrounding heights unless a major special use permit is approved in accordance with Sec. 3.9, Special Use Permit, in which case the height may be increased up to a maximum of 145 feet.
- b. Within the UC-2 District, building height shall not exceed the distance to the edge of the district (which is the mid-point of the right-of-way if the edge of the district is a public street), to a maximum of 75 feet. The ratio of building height to distance from the edge of the district shall be no more than 1:1 (see diagram below). Heights shall not be increased beyond this limit unless a major special use permit is approved in accordance with Sec. 3.9, Special Use Permit, in which case the height may be increased up to a maximum of 120 feet.



2. Internal Campus

The maximum height of a structure shall be 120 feet, unless a major special use permit is approved in accordance with Sec. 3.9, Special Use Permit, in which case the height may be increased up to a maximum of 145 feet.

E. Architectural Standards

1. Transitional Use Area

- a. For new development, documentation shall be required that demonstrates architectural and site design compatibility with adjacent buildings and sites, considering the following criteria:

- (1) Roof type, including extent of eaves and eave ornamentation, if any;
- (2) Articulation of the facades, including details, massing, and rhythm, associated with the architectural styles adjacent to the district;
- (3) Facade materials; and
- (4) Size, pattern, style, and location of windows and doors.

This documentation shall be submitted with the site plan for each proposed development within the Transitional Use Area.

- b. Each building shall have a direct orientation and entryway facing a street. Articulation of any side of a building facing a street at the perimeter of a UC district shall be similar in expression and articulation to the primary facade.

2. Internal Campus

Specific architectural standards shall not apply, unless shown as committed elements on a development plan.

F. Outdoor Lighting

1. Transitional Use Area

Within a Transitional Use Area, all standards of Sec. 7.4, Outdoor Lighting, shall apply except that new athletic fields shall not be illuminated after 11:00 p.m.

2. Internal Campus

Within the Internal Campus, the standards of Sec. 7.4, Outdoor Lighting, shall not apply so long as the maximum illumination at the edge of a UC district does not exceed the limits imposed by paragraph 7.4.3, Standards.

G. Environmental Standards

All applicable environmental standards of Article 8, Environmental Protection, shall apply within the UC or UC-2 districts.

H. Landscaping

1. General

a. Transitional Use Area

Within a Transitional Use Area, landscaping shall be provided in accordance with Article 9, Landscaping and Buffering, so as to ensure compatibility with adjacent properties.

b. Internal Campus

Other than street trees pursuant to Sec. 9.6. Street Trees, no specific landscaping requirements shall apply.

2. Vehicular Use Areas

In the Transitional Use Area, surface parking lots shall not be located immediately adjacent to or across from properties zoned residential unless separated from the street by a landscaped area equivalent to the average street yard of existing buildings or parking lots on adjacent properties.

I. Parking

- 1.** The required number and location of motorized and bicycle parking spaces shall be tied to the university or college's documentation of adequate parking availability during peak periods of typical academic days. In order to document that there are adequate parking facilities, a plan from each university or college covered by a UC district shall be filed with the City-County Planning Department and reviewed and approved by the Planning Director or designee.

The following information shall be provided in the plan:

- a.** A map depicting the location of parking lots within the UC District and those outside the UC District which are utilized to satisfy parking requirements.
- b.** An inventory of the number of parking spaces, per parking lot or structure, including the type of parking spaces (compact, handicap accessible, reserved, visitor, etc.). Totals shall be provided for sub-areas as well as district-wide. Parking can include spaces located outside the UC District that are controlled by the university or college, as long as that parking serves the UC District.
- c.** A report indicating the typical maximum occupancy of each parking lot or structure at typical peak-period. Data shall distinguish between permit-parking and visitor parking. The occupancy data shall be collected within six months of the date of plan submittal and shall include the date(s) and time(s) of the data collection.

- d. The inventory of bicycle parking spaces within the UC District, indicating the total number of spaces within each section or sub-area within the campus, as well as district-wide. General locations of bicycle parking spaces shall be identified on a map.
 - e. A summary report describing any Traffic Demand Management (TDM) programs operated by the university or college within a UC District.
 - f. A report indicating any changes in enrollment and employment by the University or college within a UC District since the last plan update and any projected changes within the next four years.
 - g. A summary report indicating the availability of the following within a UC District:
 - (1) Sidewalk connectivity;
 - (2) Transit and remote parking services; and
 - (3) Bicycling amenities.
- 2. The documentation shall demonstrate that the following minimum standards are met:
 - a. The vacancy rate for total, district-wide motorized parking shall be at least 10%.
 - b. The individual vacancy rates for total parking and visitor parking within each sub-area shall be at least 5%.
 - c. The total number of bicycle parking spaces shall be at least 10% of total motorized parking district-wide; and at least 5% or two parking spaces, whichever is greater, within each sub-area.
- 3. If a sub-area does not meet the minimum parking standards, any proposed development in that sub-area that requires a site plan, except for the following exemptions, shall include motor vehicle and/or bicycle parking, as applicable, to lessen the deficiency.
 - a. In lieu of providing additional motor vehicle parking, documentation of new or revised remote parking facilities that remove or lessen the deficiency, but do not create new deficiencies elsewhere, can be provided.
 - b. Exemptions from providing any additional parking consist of the following improvements:
 - (1) Unmanned facilities of less than 1,000 square feet, such as storage rooms, mechanical equipment, coolers, or stand-alone ice kiosks;
 - (2) Buildings or additions of less than 1,000 square feet of building area;
 - (3) Improvements that are documented to solely bring existing facilities up to current health, safety, or building code requirements;
 - (4) Grading and/or utility improvements for sewer or water service; or
 - (5) Any site plan submittal that only requires review by the Planning Department.

4. If a college or university has provided documentation of TDM programs, then the minimum motor vehicle vacancy rates shall be reduced by 1%.
5. Sub-areas shall be geographically and functionally cohesive. Remote parking can be identified as serving a sub-area.
6. Approved parking plans shall be valid for a four-year period.
7. Parking requirements pursuant to paragraph 10.3.1, Required Motorized Vehicle and Bicycle Parking, are not required for site plans in a UC district if an approved, valid parking plan is in place. If there is not an approved, valid parking plan in effect at the time a development approval is requested by an institution, the parking requirements of Sec. 10.3, Required Parking, shall be applied. Alternatively, processing of the requested development approval may be delayed until a new parking plan is approved.

J. Signage

1. Transitional Use Area

All applicable standards of Article 11, Sign Standards, shall apply.

2. Internal Campus

The standards of Sec. 11.8, Elements of Common and Way-Finding Signage Plans, shall not apply.

K. Solid Waste

The requirements of Chapter 58 of the City Code, Solid Waste Collection and Disposal, may be modified on projects within a UC district if the college or university has filed a solid waste master plan with the City and that plan has been approved by the Solid Waste Director or designee.

L. Infrastructure

1. Road Improvements

a. Traffic Impact Analysis

- (1) A traffic impact analysis consistent with the requirements of Sec. 3.3, Traffic Impact Analysis, shall be required with or in advance of site plan approval of projects utilizing a UC district when appropriate thresholds are reached.
- (2) Within the City, this analysis may be included at the time of zoning map changes to a UC district initiated by the university or college or in advance of site plan submittals. If provided after the zoning map change, a single TIA, at the applicant's discretion, may reflect development throughout a UC district, for identified areas within a UC district, or be provided on a site plan specific basis.

b. Road Improvements (City only)

If the applicant performs the TIA utilizing any option other than the site plan specific basis, the university or college may submit a proposed implementation schedule for the provision of required road improvements, with the improvements tied to specific dates rather than specific projects. Such an

implementation schedule shall be reviewed and, if approved by the City, shall be used to govern the timing of all required road improvements.

2. Sidewalks

The college or university shall provide public sidewalk with each site plan application in the following manner:

- a. The length of sidewalk required per site plan shall be equal to the total of the widest dimension of the project area(s).
- b. Sidewalk can be placed as permitted in paragraph 12.4.2C.1; however, locations shall be prioritized as follows:
 - (1) Locations within the campus specified within the *Durham Walks! Plan* or subsequently adopted pedestrian plan(s);
 - (2) Within the TUA located within one mile of the project site;
 - (3) Along public right-of way internal to the district.
- c. No sidewalk shall be required pursuant to paragraph 12.4.2D, Exemptions.

3. Stormwater

A stormwater impact analysis shall be required to be approved in advance of site plan approval when appropriate thresholds on campus development are reached. Such an analysis may reflect development throughout a UC district, for identified areas within a UC district, or be provided on a site plan specific basis. If provided utilizing any option other than the site plan specific basis, the university or college may submit a proposed implementation schedule for the provision of required stormwater improvements, with the improvements tied to specific dates rather than specific projects. Such an implementation schedule shall be reviewed and approved by the City or County, as appropriate and, if approved, shall be used to govern the timing of all required improvements.

6.11.5 Commercial Center (CC)

A. Uses

1. The primary use allowed within the CC District shall be commercial. Use of this District shall require multiple buildings and tenants.
2. Uses allowed in the CC District shall be limited to those uses listed in Sec. 5.1, Use Table. Proposed residential uses in a CC District shall be noted on the Development Plan.
3. Commercial outparcels shall not comprise more than 50% of the acreage or floor area of the development.

B. Dimensional Requirements

1. Site Area

- a. A minimum of four contiguous acres shall be required for initial approval.
- b. Additions to an approved CC District may be made in increments of any size.

2. Lot Area

No minimum lot area shall be required.

C. Development Standards

1. Within the Suburban Tier, residential development shall conform to the standards of the RS-M District.
2. Within the Urban and Compact Neighborhood tiers, residential development shall conform to the standards of the RU-M District.
3. When a conflict occurs between this section and the RS-M or RU-M standards for open space, site area, or lot area, the stricter rules shall apply.

D. Density

1. Within the Suburban Tier, the maximum density shall be 11 units per acre.
2. Within the Urban Tier, the maximum density shall be 14 units per acre.
3. Within a Compact Neighborhood Tier, the maximum density shall be 18 units per acre.

E. Height

1. The maximum height shall be determined by the square footage of the buildings in the development, as indicated below:

Square Footage	Maximum Height
Less than 150,000	50 feet
150,000 to less than 250,000	90 feet
More than 250,000	145 feet

2. Any building over 50 feet shall have its proposed location and height shown on the development plan.

F. Access

Access to all outparcels shall be from the project area. No outparcel shall have direct access onto a public road.

G. Yards

1. All nonresidential and upper-story residential structures shall maintain yards per the CG District within the applicable Tier.
2. Apartment and multiplex structures shall maintain yards per the applicable housing type in Sec. 7.1, Housing Types.

H. Sidewalks

Development plans shall indicate a continuous internal pedestrian system designed to permit ready access between all elements of the development, including outparcels.

6.11.6 Industrial Park (IP)

A. Uses

1. The primary use allowed within the IP District shall be industrial. Use of this District shall require multiple buildings.
2. Uses allowed in the IP District shall be limited to those uses listed in Sec. 5.1, Use Table.

B. Dimensional Requirements

1. Site Area

- a. A minimum of ten contiguous acres shall be required for initial approval.
- b. Additions to an approved IP District may be made in increments of any size.

2. Lot Area

No minimum lot area shall be required.

C. Transitional Use Area

A landscaped Transitional Use Area of at least 30 feet shall be established around the perimeter of the District and shall be shown on the development plan. If a buffer required pursuant to Sec. 9.4, Project Boundary Buffers, imposes a greater width requirement than the Transitional Use Area, the buffer requirement shall apply.

D. Height

The maximum height of any building shall be 90 feet, unless a taller building is identified on the development plan, in which case the maximum building height shall be 145 feet.

E. Yards

Other than the Transitional Use Area requirements, no yard requirements shall be established.

F. Sidewalks

Development plans shall indicate a continuous internal pedestrian system designed to permit ready access between all elements of the development.

6.11.7 Mixed Use (MU)

A. Uses

- 1. A mixed-use development shall require residential uses as listed in Sec. 5.1, Use Table, and uses from at least one of the following use categories, with the actual uses limited to those identified in the use table:
 - a. Public and civic;
 - b. Commercial; or
 - c. Office

The location of the uses shall be shown on the development plan.

- 2. Additions to MU developments shall not be required to include multiple use types provided the use types are present on the overall site and the required ratios of use established in paragraph B.2 below are maintained.

B. Dimensional Requirements

1. Site Area

- a. A minimum of four contiguous acres shall be required for initial approval. A smaller initial site may be allowed, if the applicant can demonstrate to the governing body that certain circumstances exist that make an area of less than four acres suitable due to factors including but not limited to, location,

topography, or compatibility with adjacent uses. Sites smaller than four acres shall comply with the other requirements of the district, including the requirement to provide at least two use types on the overall site.

- b. Additions to an approved MU district may be made in increments of any size.

2. Use Area

- a. For mixed use developments containing two uses, no use shall occupy less than 30% of the floor area or gross acreage of the project.
- b. For projects with three or more uses, the 30% minimum for a single use shall be waived; however, no single use shall occupy more than 60% of the floor area or gross acreage of the project.
- c. Changes in the location of use areas within a project shall be approved through the site plan process; provided that all other requirements of the district, including the required mix of uses, are met.

3. Lot Area

Any dimensional requirements for individual lots shall be specified in the development plan.

C. Transitional Use Area

A 50-foot wide Transitional Use Area shall be established around the perimeter of each MU district. Within these areas, use and building scale (massing and height) shall reflect the uses permitted within the adjacent property; except that a single-story (or 15-foot) differential in building height between the proposed and adjacent uses shall be allowed. If, as a result of the location of uses within an MU district, a use is proposed that would typically require a buffer from the use on an adjacent property not in the district, then the buffer requirements of the typical district shall apply, even if they require a greater buffer than the required Transitional Use Areas.

D. Residential Density

1. Minimum

The minimum gross residential density shall be four units per acre for any portions of a project that are developed solely as residential.

2. Maximum

Tier	Maximum Density: Horizontal Integration of Uses (dwelling units/acre)	Maximum Density: Vertical Integration of Uses (dwelling units/acre)
Suburban	14	18
Urban	16	20
Compact Neighborhood	Core: 42 Support: 16	53

a. Vertical Integration of Uses

For projects in which residential and nonresidential uses are integrated vertically, density shall be calculated based upon the entire site acreage, including areas

typically precluded from consideration for density in Article 8, Environmental Protection.

b. Horizontal Integration of Uses

For all other projects, residential density shall only be calculated based upon that portion of the site allocated for residential uses, excluding the areas precluded for consideration for density in Article 8, Environmental Protection.

E. Nonresidential Intensity

1. Minimum

The minimum floor area shall be 30% of the square footage of the particular parcel to be developed.

2. Maximum

No maximum floor area shall be established. The maximum building coverage shall be 70%.

F. Height

The maximum height of a structure shall be 50 feet, unless a greater height (up to 145 feet) is shown on the development plan.

G. Street Yards

1. Suburban Tier

A 25-foot street yard shall be maintained, unless the project is in a Suburban Transit Area as designated in the *Comprehensive Plan*. Projects in these areas shall maintain a minimum street yard of eight feet.

2. Urban Tier

A 15-foot street yard shall be maintained.

3. Compact Neighborhood Tiers

Projects shall respect a maximum street yard such that at least 60% of any structure is no more than 15 feet from the edge of right-of-way.

H. Open Space

1. Suburban Tier

At least 10% of the gross acreage of the entire site shall be devoted to open space, unless the project is located in a Suburban Transit Area as designated in the *Comprehensive Plan*. Projects in these areas shall have a minimum open space requirement of 2% of the gross acreage of the site.

2. Urban Tier

At least 5% of the gross acreage of the site shall be devoted to open space.

3. Compact Neighborhood Tier [See G.3, above]

At least 2% of the gross acreage shall be devoted to open space.

I. Landscaping

The applicant shall establish a set of design guidelines that provide provisions for landscaping throughout the entire development, ensuring that a common theme with consistent plant materials are utilized throughout the project.

J. Parking

1. Residential

a. Single-Family Detached, Zero Lot Line, Townhouse

Parking shall be provided at a minimum rate of one parking space per dwelling unit and a maximum rate of 2.1 spaces per dwelling unit.

b. Multifamily

Multifamily parking shall not exceed an amount equivalent to 2.1 spaces per dwelling unit.

2. Nonresidential

- a. Based upon the parking rates in paragraph 10.3.1A.4, Parking Rate Table, the amount of motor vehicle parking shall be required as follow:

Minimum	80% of the parking rate
Maximum	100% of the parking rate. An additional 25% is allowed as long as the additional parking spaces are located within structured parking (above ground or underground)

K. Sidewalks

Development plans shall indicate a continuous internal pedestrian system designed to permit ready access between all elements of the development.

L. Phasing

1. A phasing plan that identifies the stages of development shall be required as part of the zoning map change application proposing to use the MU District.
2. Some components of both residential and nonresidential uses shall be included in the first phase of any project in the MU District.

M. Traffic Impact Analysis

1. A traffic impact study shall be required as a part of the development plan when portions of the development or the entire development will generate vehicle trip levels in excess of those identified in Sec. 3.3, Traffic Impact Analysis; however, the TSUP that may be required pursuant to paragraph 3.3.8, Transportation Special Use Permit, shall not be required within the MU District.
2. The City Transportation Department or NCDOT, as appropriate, shall review the development plan as well as the projected on-site and off-site traffic impacts, and determine that the mixed use project is designed to adequately provide for transportation needs.
3. The City Transportation Department or NCDOT, as appropriate, may recommend that the governing body require the developer to limit access points, provide additional

lanes, install traffic islands, provide transit facilities, install traffic signals, or make other improvements to assure traffic safety.

N. Additional Requirements

1. Unless the public transit provider indicates in writing to the Planning Director that a shelter is not required, construction of bus shelters shall be mandatory wherever the project includes or is adjacent to an existing or previously identified transit line extension proposed in adopted documents by the public transit provider.
2. Lots may front on public or private streets. A plan for the future maintenance of project amenities and any private streets shall be submitted with the Site Plan.

Sec. 6.12 Design Districts

6.12.1 Purpose

Design districts shall be established to regulate the physical form of specific areas within the community. They regulate the relationship between buildings and the streetscape by focusing on mass, scale, and character along the street. The emphasis is on appropriate building placement and massing rather than specific land uses. They are intended to encourage innovative projects that are integrated and compatible with nearby development.

6.12.2 All Design Districts

A. General

1. Design district uses shall be permitted in accordance with Sec. 5.1, Use Table.
2. Unless alternate standards are explicitly established in Sec. 6.12, Design Districts, all standards and provisions of this Ordinance shall apply to development within any Design District. The requirements of paragraph 6.12.2, All Design Districts, shall be met in addition to either the requirements of paragraph 6.12.3, Downtown Design (DD) District, or paragraph 6.12.4, Compact Design (CD) District.
3. If conflicts exist between the requirements of this section and other requirements contained in Article 6, District Intensity Standards, or Sec. 7.1, Housing Types, the requirements of this section shall apply.
4. Development in Design Districts shall conform to any applicable adopted Open Space or Gateway Plans.
5. Where a Design District is overlaid by a Historic District Overlay, the standards set forth in Sec. 4.10, Historic District Overlay, shall apply.
6. Alternative forms of compliance for the following standards may be approved through a design special use permit issued pursuant to Sec. 3.9, Special Use Permit:
 - a. Building standards in paragraphs 6.12.2D.2 through 7 for the applicable Frontage Types.
 - b. Paragraph 6.12.2D.8.c, Building Standards, and paragraph 6.12.2D.8.d, Front Facade Street Yard Standards, for the Monumental Building Type.
 - c. Paragraph 6.12.2E, Additional Standards.
 - d. Paragraph 6.12.2F, Architectural Standards.
 - e. Paragraph 6.12.2G, Streetscape Standards.
 - f. Paragraph 6.12.3A.1 or 6.12.4A.1, Building Placement Standards.
 - g. Height Articulation (Massing) standards in the table in paragraph 6.12.3A.2.a or 6.12.4A.2.a.
7. **Durham Design Manual**
The *Durham Design Manual* shall contain the following:

- a. Recommended standards and methodologies for building and site design within the Downtown Design District.
 - b. Standards to conform to streetscape requirements of this Section.
- 8. For projects with no proposed changes to the site, only the following standards shall apply, as appropriate:
 - a. Paragraph 6.12.2A.9.
 - b. Paragraph 6.12.2E.2.b.
 - c. Paragraph 6.12.2F.2.c.
 - d. Paragraph 6.12.2G.1.b.
 - e. Paragraph 6.12.2G.3, Streetscape Amenities.

9. Street Level Residential Uses within Design Districts

- a. Residential uses at street level shall be raised a minimum of 30 inches from the average finished ground level.
- b. For buildings with multiple residential entries, the finished floor elevation for each residence's floor plate shall be a minimum of 30 inches above the grade at street level.
- c. Exemptions from paragraphs 9.a and 9.b, above:
 - (1) Utilization of the Forecourt Frontage type with a minimum forecourt depth of 10 feet.
 - (2) Residential uses on the ground floor of a building located at least 20 feet from the street facing façade.
 - (3) Entry areas to residential uses, such as lobbies, foyers, or common areas.

Commentary: The elements described in paragraph 6.12.2, All Design Districts, are the building blocks for the creation of new Design Districts. Design districts utilize sub-districts, height articulation, and building and frontage types.

B. Sub-Districts of Design Districts

In the creation of a Design District, any number of the following sub-districts shall be established and depicted on the zoning map for the specific Design District:

1. Core (C)

The portion of a Design District where the highest, densest urban development, with a mix of vertically integrated uses, is expected and encouraged.

2. Support 1 (S1)

The portion of a Design District where moderate intensity urban development creates a mixed use urban environment at a lesser scale that respects adjacent development.

3. Support 2 (S2)

The portion of a Design District intended to provide a sensitive transition from more intense development to development adjacent to the district, often residential in nature.

4. Special Sub-Districts

Special sub-districts can be established as needed for any of the Design Districts. Specific standards for a special sub-district shall be contained in the standards for the Design District in which it is established.

a. Pedestrian Business Sub-District (Ninth Street)

The Pedestrian Business sub-district (Ninth Street) (CD-P(N)), which is located in the Compact Design District that incorporates a portion of Ninth Street, is created to protect the character existing along the east side of Ninth Street within the district and to ensure that any new development on the west side of Ninth Street within the district is in keeping with that character.

C. Height Articulation

1. Podium Height

The minimum and maximum podium height is established along the street frontage based on sub-district.

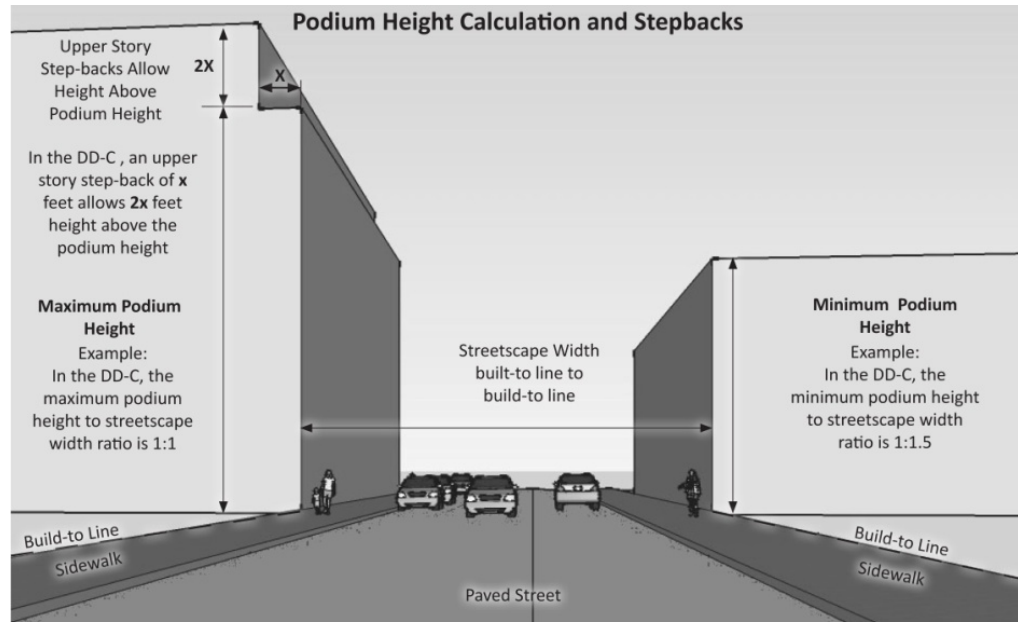
- a. Minimum and maximum podium heights are established pursuant to paragraph 6.12.3A.2 for the DD District and paragraph 6.12.4A.2 for the CD District.
- b. All Building Types and Frontage Types, except the Forecourt Frontage Types and the Monumental Building Type, shall meet the minimum podium height at the build-to line.
- c. Forecourt Frontage Types shall meet the minimum podium height at the back of the forecourt, pursuant to 6.12.2D.6.b(1).

Commentary: Building height is typically comprised of two components: the podium (the initial building height) and the upper story step-back. In some instances, a building consists only of podium height. Urban design principles include both a minimum enclosure of the public realm for pedestrian-scaled development, and a maximum enclosure to ensure light and air access on the street. The minimum podium height to streetscape width ratios provide a minimum enclosure. The maximum podium height to streetscape width ratios and the upper story building step-backs provide a maximum enclosure.

2. Upper Story Building Step-Backs

Upper story step-backs can be used above the minimum podium height, and shall be used above the maximum podium height, pursuant to paragraph 6.12.3A.2 for the DD District and paragraph 6.12.4A.2 for the CD District.

- a. Upper story building step-backs shall be provided as required by the corresponding Building Height and Massing table for each district.
- b. Step-backs shall apply until the final 25% of the site area is reached at which point the building can extend up without further step-backs until the maximum allowable height is reached.



D. Frontage and Building Types

Frontage Types define the interface of the development with the streetscape. They apply to all street facades and the adjoining streetscape, including public and private streets and public access and common areas, generally at ground level. Building Types regulate massing of the entire building along all sides.

1. Permitted Frontage and Building Types

Permitted Frontage and Building Types are indicated by a “✓” in the table below.

Sub-District		Frontage or Building Type					
		Storefront	Arcade	Courtyard	Forecourt	Parking Structure	Monumental
Downtown Design	DD-C	✓	✓	✓	✓	✓	✓
	DD-S1	✓	✓	✓	✓	✓	✓
	DD-S2	✓	✓	✓	✓	--	✓
Compact Design	CD-C	✓	✓	✓	✓	✓	--
	CD-S1	✓	✓	✓	✓	--	✓
	CD-S2	✓	✓	✓	✓	--	✓
	CD-P	✓	✓	✓	--	--	--

2. General Standards

- a. A building can employ different Frontage Types, but Building Types cannot be combined.
- b. If a property has street frontage on all sides, a single street frontage can be designated as a service frontage on the site plan and thereby be exempt from meeting all Frontage Type standards where designated.

3. Storefront Frontage Type

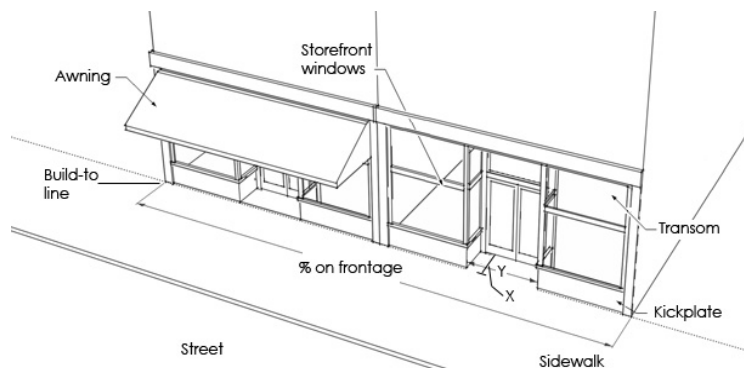
a. Description

A structure with facades placed at or close to the right-of-way line, with the entrance at sidewalk grade.

b. Building Standards

In addition to the standards in paragraph 6.12.2F, Architectural Standards, the following standards shall apply to the Storefront Frontage Type.

- (1) The building mass shall be articulated as individual vertical bays, each a maximum of 50 feet in width with a storefront and an entrance.
- (2) A storefront window system shall be used at the street level.
- (3) A primary horizontal articulation shall be made between the ground floor and the upper floors that includes a change in material or change in plane.
- (4) A secondary, tripartite, horizontal articulation shall be made within the ground floor facade (for example: kickplate, storefront, and transom).
- (5) Primary ground floor entries shall be recessed so that any door in a fully opened position does not extend beyond the building facade.
- (6) Recessed entries, required in paragraph (5) above, shall be proportionally wider (Y) than they are deep (X).



4. Arcade Frontage Type

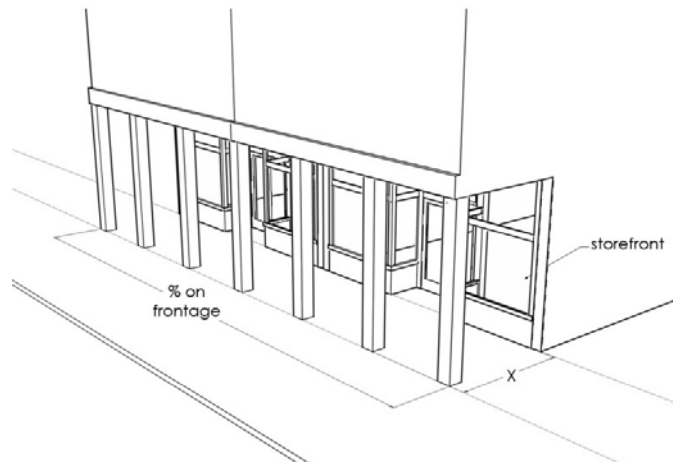
a. Description

A structure with a recessed street level facade that creates a linear passageway parallel to the street covered by the upper stories of the building, which extend to the build-to line and are supported by columns.

b. Building Standards

In addition to the standards in paragraph 6.12.2F, Architectural Standards, the following standards shall apply to the Arcade Frontage Type.

- (1) The building shall have a ground floor storefront and entrance within each building bay.
- (2) The depth (X) of the recessed street level, or arcade, shall be a minimum of eight feet and a maximum of 20 feet, measured from the build-to line.
- (3) Columns shall be placed at the build-to line and their spacing shall, at a minimum, correspond to the vertical bay articulation along the frontage. Voids between columns shall not be permanently filled in.
- (4) Voids between columns shall not be permanently filled in.
- (5) A minimum of 65% of the colonnade facade at the ground level shall be open.



5. Courtyard Frontage Type

a. Description

A structure with a full height recessed facade for a portion of the building frontage where the building(s) creates enclosure around an internal void (such as a U or L shaped building footprint).

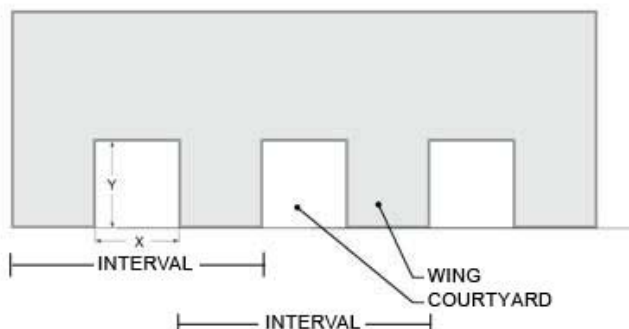
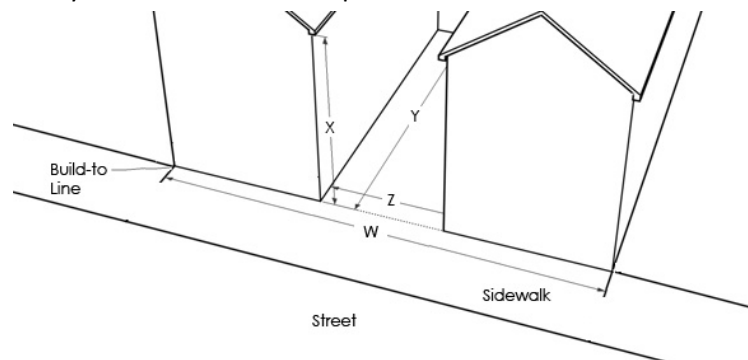
b. Building Standards

In addition to the standards in paragraph 6.12.2F, Architectural Standards, the following standards shall apply to the Courtyard Frontage Type.

- (1) Dimensional Standards

Requirement	Minimum	Maximum
Required street frontage of the lot (W)	100 feet	---
Required width (Z) at build-to line	20% of the building frontage or 30 feet, whichever is greater	50% of the building frontage
Required courtyard depth (Y)	50% of courtyard width (Z) or 30 feet, whichever is greater	---
Required courtyard width to building height ratio (Z:X)	2:1	1:2
Required courtyard interval (defined as wing, courtyard opening, and wing)	—	200 feet

- (2) Main entrances can be located in the courtyard instead of, or in addition to, entrances at the street and shall be spaced at a maximum of 150 foot intervals along the frontage.
- (3) A minimum glazing of 30% shall apply to the courtyard facades, in addition to the building facade glazing requirements in paragraph 6.12.2F.2, Fenestration Requirements.
- (4) Courtyard voids shall not be placed on block corners.



Plan View



6. Forecourt Frontage Type

a. Description

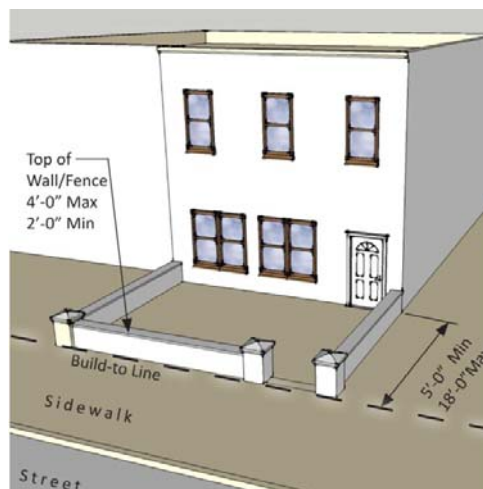
A structure with facades that are separated from the sidewalk and/or street by a small forecourt. The forecourt shall be either at the same average grade as the adjacent street, or situated as follows: above grade (raised court), below grade (light court), or with a raised entry (stoop).

b. Building Standards

In addition to the standards in paragraph 6.12.2F, Architectural Standards, the following standards shall apply to the Forecourt Frontage Type.

- (1) The required forecourt shall have a minimum depth of five feet and maximum depth of 18 feet measured from the build-to line.
- (2) A minimum two-foot high fence or street wall is required at the build-to line and must comply with the provisions of Sec. 9.9, Fences and Walls. This requirement shall only apply to forecourts at the adjacent street grade for 60% of the street frontage.

Forecourt at same average grade as the adjacent street:

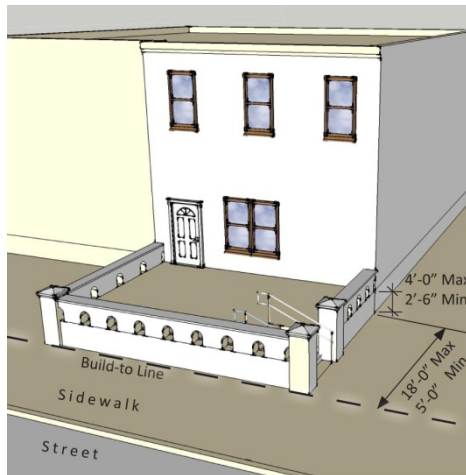


(3) Forecourt Sub-Types

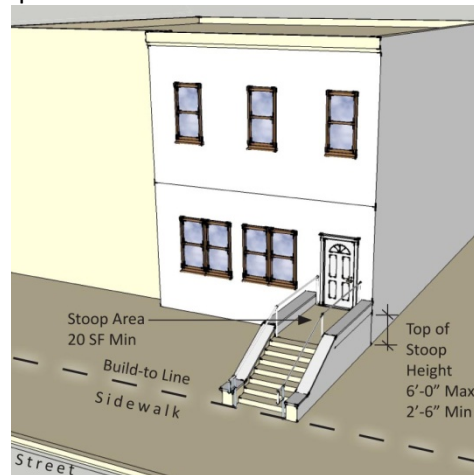
- (a) Raised court and/or stoop can be created when the ground level of the forecourt is raised above the adjacent street level.

- i. The raised court shall be:
 - a) A minimum of 30 inches and a maximum of four feet above street grade; and
 - b) More than 50% of the width of the building bay.
- ii. A stoop shall be:
 - a) A minimum 20 square foot landing area;
 - b) Raised a minimum of 30 inches and a maximum of six feet above the average grade at the street provided that the stoop corresponds to building entries; and
 - c) Less than 50% of the width of the building bay.

Raised Court:

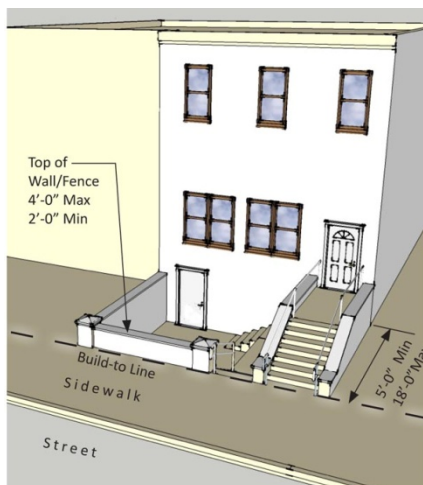


Stoop:



- (b) A light court can be created when the ground level of the forecourt is lowered below the average adjacent street grade. The light court shall be a usable space accessible from the street and/or the building.

Light Court:



7. Parking Structure Frontage Type



a. Description

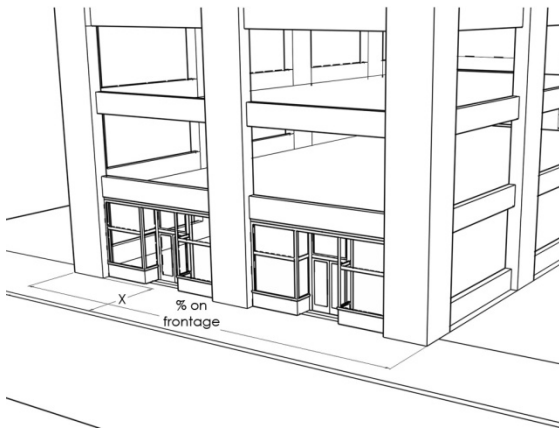
A parking structure with facades that are partially or completely exposed at the street frontage and visible from the right-of-way.

b. Building Standards

In addition to the standards in paragraph 6.12.2F, Architectural Standards, the following standards shall apply to the Parking Structure Frontage Type.

- (1) Parking structures that do not include ground floor retail shall be built to allow conversion of a minimum of 75% of the ground floor along the street frontage to retail space.
- (2) For parking structures with more than 200 feet in contiguous length along the street frontage, other than a freeway or limited-access thoroughfare, a conditioned interior space measuring a minimum of 24 feet in length along the street frontage, and compliant with either the Storefront or Arcade Frontage Type standards, shall be created in the middle 50% of that street frontage length.
- (3) Access points for pedestrians shall be located to minimize pedestrian and vehicle conflicts. Pedestrian sight distance triangles measuring 10 feet by 10 feet, or pedestrian warning devices, shall be provided at all access points.
- (4) The following specific architectural standards shall apply:
 - (a) The sloping nature of the interior structure shall not be repeated or revealed on the exterior facade. Ramping in parking structures shall be internalized to avoid an angular geometry to the perimeter of the structure.
 - (b) Where non-vehicular vertical circulation elements are located along the street frontage they shall meet either the Storefront or Arcade Frontage Type requirements. Entrances to non-vehicular vertical circulation shall have direct access to and from the street frontage.
 - (c) For exposed parking areas on all levels, a decorative wall or other decorative screening of sufficient height to screen parked vehicles shall be provided. Louvers shall not be used for screening openings at street level.

- (d) Glazing requirements within the table in paragraph 6.12.2F.2.a, do not apply. Openings shall be provided for each level of the facade facing the street at a minimum rate of 40% of the façade.
- (e) Openings for parking areas on all levels, not including driveway access, shall be a maximum of 100 square feet.
- (f) Where parking spaces are exposed at the podium levels, openings shall be articulated with additional columns or pilasters, window frames, decorative screens, trellises, or vegetative walls.
- (g) No more than 30% of the parking structure materials along the street frontage shall be unfinished concrete.



8. Monumental Building Type

a. Description

A structure with large setbacks from the sidewalk which become publicly accessible open area. This Building Type can be utilized for public or private development with a qualifying use as listed below.

b. Qualifying Uses

- (1) Monumental Building Types shall use one of the following as the primary use:
 - Auditorium;
 - City Hall or County Administration Complex;
 - Courthouse;
 - Library;
 - Museum;
 - Passenger Terminal;
 - Place of Worship;
 - School, elementary, middle, or high; or
 - Theater.

c. Building Standards

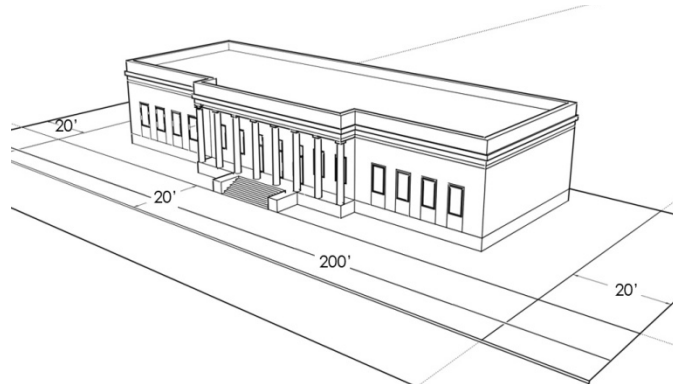
- (1) Minimum setbacks shall apply to this type in lieu of the build-to line as required by the corresponding Building Placement table in each Design District.
- (2) A minimum street frontage of 200 feet shall be required. For developments with multiple street frontages only one frontage shall be required to meet the minimum.
- (3) The following specific architectural standards shall apply.
 - (a) When provided, punched windows shall be a minimum of two feet wide by four feet tall.
 - (b) The finished floor elevation of the main building shall be raised a minimum of 18 inches above the average grade of the adjacent ground level measured at the sidewalk.
 - (c) The primary entrance shall be located on the front facade and shall face the street yard along the primary public or private street frontage. The front facade shall be clearly defined and have a greater level of architectural expression and articulation than the remaining facades.
 - (d) The main entrance shall be articulated as a major component of the main facade.
 - (e) Primary building materials shall consist of brick, cast in place concrete or pre-cast concrete panels, glass, and/or stone.

d. Front Facade Street Yard Standards

The front facade street yard shall meet the following requirements:

- (1) It shall be no more than three vertical feet higher than sidewalk grade at the street frontage for a minimum depth of five feet, measured from the property line at the right-of-way.
- (2) It shall have a minimum depth of 20 feet from the back-of-curb, extend a minimum of the length of the building along the street frontage, and be comprised completely of landscaping and hardscaping as described below.
- (3) A minimum of 30% of the street yard area shall be comprised of hardscaping and shall include the following:
 - (a) The entire hardscaped area shall be covered with modular pavers, decorative concrete, or stone paving.
 - (b) A minimum of one "element of interest" (i.e. fountain, art, clock, etc.) shall be provided.
 - (c) One linear foot of seating per 40 square feet of hardscaped area shall be provided.
 - (d) One trash and one recycling receptacle per 5,000 square feet of hardscaped area shall be provided.

- (4) A minimum of 30% of the street yard area shall be comprised of landscaping and shall include the following:
 - (a) One 2 ½-inch caliper tree per 1,000 square feet of landscaped area shall be required; and
 - (b) No more than 50% of the landscaped area shall be lawn. The remainder of the area shall be planted with trees, shrubs, perennials, and/or annuals.
- (5) It shall not be blocked, gated, or barred in such a manner to prevent 24-hour public access.



E. Additional Standards

1. Pedestrian Mall Standards

In Design Districts, pedestrian malls, when provided, shall meet the following standards:

- a. Pedestrian malls shall have a minimum width of 35 feet, a maximum width of 50 feet, and shall begin and terminate at a public or private street.
- b. A clear zone, free of obstructions, and at least 10 feet in width, shall be provided along the length of the pedestrian mall.
- c. Pedestrian malls shall have hardscaped surfaces. A maximum of 50% of the pedestrian mall can be landscaped provided the required clear zone is hardscaped and maintained for the length of the pedestrian mall.
- d. Street trees as per Sec. 9.6, Street Trees, shall be provided along the street right-of-way where the pedestrian mall intersects that right-of-way.

- e. The requirements of paragraph 6.12.2G.3, Streetscape Amenities, shall apply. Amenities shall be distributed throughout the length of the pedestrian mall.
- f. Street names can be established for pedestrian malls pursuant to paragraph 12.3.2, Street Names; and the establishments that open onto the pedestrian mall can have addresses on it when a minimum clear zone of 20 feet in width and 13.5 feet in height is provided to accommodate emergency vehicles.
- g. Pedestrian malls shall not be blocked, gated, or barred in such a manner to prevent 24-hour public access.
- h. A public access easement for the entire area of any pedestrian mall shall be granted in perpetuity to the City of Durham.

2. Parking and Services

- a. Surface parking and service areas shall not be located at street corners.
- b. Where an alley is present service entrances, above ground equipment (as listed in Sec. 9.7, Screening), trash containers, and parking areas shall be accessed from the alley and concealed from pedestrian view. Where conflicts with utilities, sight distance triangles, pedestrian accessibility, or vehicular and service accessibility exist, access points from public or private streets shall be permitted.
- c. To meet the required minimum percentage of the building facade at the build-to line, parking areas can be accessed by a tunnel through the building. When this option is utilized the design shall demonstrate that the width and height of the opening in the building is the minimum required to comply with any applicable standards.

F. Architectural Standards

1. Building Access and Pedestrian Connectivity

- a. The primary entrance shall:
 - (1) Be within 30 inches of street level;
 - (2) Face the street; and
 - (3) Have direct access to the street.
- b. Exemptions from paragraph a, above:
 - (1) Entrances to the Courtyard and Forecourt Frontage Types, per paragraph 6.12.2D.5, Courtyard Frontage Type, and paragraph 6.12.2D.6, Forecourt Frontage Type.
 - (2) Existing entrances designed and used as the primary entrance for the building, as long as access to the street is maintained.
- c. Primary building entrances shall be clearly defined and articulated by decorative surrounds, thresholds, pediments, distinctive lighting, lintels, sidelights, canopies, or other distinctive architectural elements which frame and identify the entrance. Primary entrances shall also be larger in scale than secondary

entrances. Entries from parking areas shall be secondary in nature and articulation.

- d. Residential uses at street level shall be pursuant to paragraph 6.12.2A.9, Street Level Residential Uses within Design Districts.
- e. For every 250 feet in facade length along the street frontage, a minimum of one exterior pedestrian passage shall be provided between or through buildings to allow for pedestrian connectivity.
 - (1) Such passages shall maintain a minimum of eight feet of clearance in width and height.
 - (2) Such passages shall be architecturally distinctive.
 - (3) Such passages shall be illuminated as per paragraph 7.4.3, Standards.
 - (4) Pedestrian passages can be provided between two buildings, or can be provided as a tunnel through a building; but shall not create a dead end.
 - (5) Such passages not be blocked, gated, or barred in such a manner to prevent 24-hour public access. For projects that are 100% residential (not including ancillary uses provided for residents of the development, such as leasing offices, pools, fitness facilities, etc.), these passages can have limited access for security.

2. Fenestration Requirements

- a. A minimum percentage of building facades facing street frontages shall be glazed window or door openings as follows:

Facade Location	Glazing Required	Glazing for Portion with 4% Slope or Greater ¹
Storefront and Arcade Frontage Type at Sidewalk Level	65%	50%
Forecourt Frontage Type at Sidewalk Level	50%	25%
Monumental Building Type at Ground Level	30%	25%
Parking Structure Frontage Type, All Levels	See paragraph 6.12.2D.7.b(4).	
All Podium Levels except at Sidewalk Level for All Uses	25%	25%
All Levels Above the Podium	20%	20%
Exceptions to the Above Criteria:		
Overnight Accommodations at Sidewalk Level	30%	25%
Residential at Sidewalk Level	30%	25%

¹ Slope is measured parallel to the street.

- (1) The area of any exterior air intake louvers or vents used for mechanical equipment or HVAC systems can be subtracted from the total wall area when calculating glazing requirements.
- (2) Upper floor windows greater than 10 square feet in area shall be divided by a minimum of one muntin, mullion, or sash.
- (3) Street-facing facades at any level and placed 40 feet or more away from the build-to line shall provide the fenestration as listed for "All podium levels except at sidewalk level for all uses" in the table above.
- (4) Courtyards with facades completely internal to the site and not applicable to the Courtyard Frontage Type as described in 6.12.2D.5, Courtyard Frontage Type, are exempt from minimum fenestration requirements.

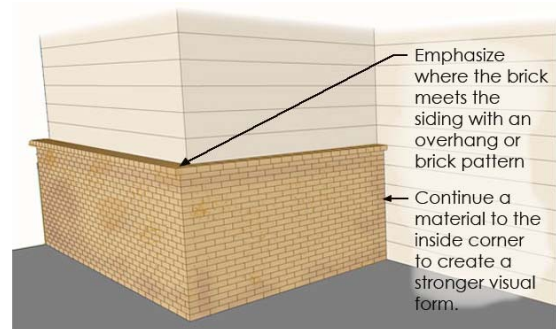
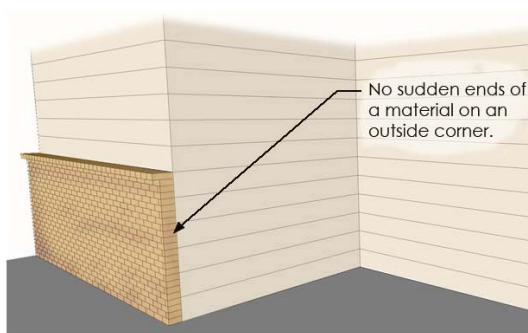
b. Street-Level Window Design Standards

All street level glazing used to meet these fenestration requirements shall comply with the following standards to ensure visual interest along the streetscape:

- (1) Street-level glazing shall have transparent glass. Mirrored and frosted glass shall not be used.
- (2) Street-level glazing shall be maintained free of internal obstructions or partitions to a minimum depth of three feet.
- (3) Street-level glazing shall not be obscured by materials applied to the inside of the glass including, but not limited to: paper and paint. Signs allowed pursuant to Article 11, Sign Standards, are exempt from this requirement.

3. Materials

- a.** Vertical changes in exterior building materials shall only occur at inside corners of the building facade.



- b.** Horizontal changes in exterior building materials shall only occur as defined lines, edges, or elements.
- c.** Incidental changes in material, such as but not limited to quoins or keystones, are allowed.

4. Facades

Facades of buildings visible from public or private streets, or from private access and common areas, shall be designed as follows. Portions of building facades in the aforementioned locations and used as retaining walls shall also be subject to these standards.

a. Building Bays

- (1) Building bays shall be articulated with a maximum width of 50 feet for each bay and building entrances at a maximum interval of 100 feet. To gain additional 25-foot increments of spacing between entrances, up to a maximum of 200-foot intervals, bay widths shall be decreased in five foot increments per 25 feet of added spacing.

Example: To provide building entrances at 175-foot intervals for a project, bay widths of 35 feet would be required ($100+3(25)=175$; $50-3(5)=35$).

- (2) Building bays shall be designed with vertical articulation elements (e.g. pilasters, reveals) that create relief from the main facade surface).
- (3) Rooflines shall be varied to reinforce the articulation of the primary facade.
- (4) For buildings in the Pedestrian Business sub-district (Ninth Street) of the CD District, the rhythm established by typical building bay widths of the traditional commercial structures on the east side of Ninth Street between Perry Street and West Markham Avenue shall be maintained instead of the increment established in paragraph 6.12.2F.4.a(1).
- (5) Building bays shall be articulated from street level to the top of the podium.

- b. Building tops shall be articulated with discernible cornice lines, parapets and/or fascias that create three-dimensional relief or reveal.

- c. The base, or ground floor, shall appear visually distinct from the upper stories through the use of a change in building materials or textures, window shape or size, an intermediate cornice line, an awning, arcade or portico, upper-floor balconies, or similar techniques.

d. Corner Facades

- (1) Buildings on corner lots shall be designed with all street-facing facades having similar architectural expression and articulation.
- (2) Any corner tower element shall wrap both sides of the corner and be articulated as a distinct vertical element. This element shall not appear merely as a coplanar extension of the main façade.

G. Streetscape Standards

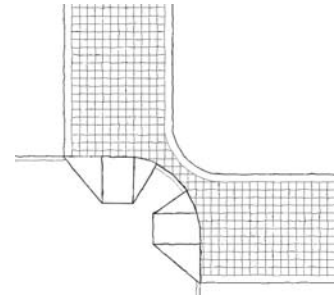
The following items are required for all development and shall be provided along all public and private streets. Materials, furnishings, and other specifications shall be provided in accordance with the *Durham Design Manual*.

1. Sidewalks

- a. Sidewalks shall be provided from the back-of-curb to the build-to line in the Core sub-district of all Design Districts. In all other sub-districts, sidewalks shall be provided from the back-of-curb to the build-to line and can include a planting strip of a maximum of three feet in depth located between the sidewalk and the back-of-curb.
- b. For the Monumental Building Type, or sites where the build-to line is greater than 18 feet from back-of-curb due to paragraphs 6.12.3A or 6.12.4A, Site Design Standards, the sidewalk shall be a minimum of 10 feet wide and a landscape strip with a minimum width of three feet can be provided against the back-of curb, rather than the standard in paragraph 6.12.2G.1.a, above.
- c. A continuous, unobstructed area, or “clear zone,” of five feet shall be maintained at all points along the sidewalk. In lieu of this standard, Pedestrian Malls shall maintain clear zones per paragraph 6.12.2E.1.b.
- d. Parking areas, loading zones, and other similar features shall not utilize, or encroach into, the required sidewalk area as described in paragraphs 6.12.2G.1.a or b, above.

2. Accessibility

- a. Sidewalk accessibility ramps shall be provided at street intersections to direct users across crosswalks rather than diagonally into intersections.
- b. Driveway aprons shall be provided so that sidewalks remain level for the width of the clear zone.



3. Streetscape Amenities

- a. Amenities shall be provided within the streetscape as indicated in the table below and shall be calculated by rounding to the nearest linear foot or receptacle.

Sub-District	Required Amenity Standards			
	Seating	Solid Waste Receptacles	Decorative Street Lights	Street Trees
Core (-C)	One linear foot per 15 linear feet of street frontage	One per 150 linear feet of street frontage	When existing street lights are replaced or new street lights are installed, they shall meet the specifications for decorative street lights found in the <i>Durham Design Manual</i>	Pursuant to Sec. 9.6, Street Trees. See planting guidelines and details in the <i>Landscape Manual</i> and the <i>Durham Design Manual</i>
Support 1 (-S1)	One linear foot per 20 linear feet of street frontage	One per 200 linear feet of street frontage		
Support 2 (-S2)	One linear foot per 25 linear feet of street frontage	One per 250 linear feet of street frontage		
Pedestrian Business (-P)	One linear foot per 15 linear feet of street frontage	One per 150 linear feet of street frontage		

- b. Existing streetscape amenities along the street frontage of the development can count towards required amenities so long as they meet all dimensional requirements.
- c. Seating shall be 12 to 30 inches high and a minimum of 15 inches deep. Seating that accommodates users on both sides shall be at least 30 inches deep.
- d. Ledges and walls can count as seating provided that they meet the dimensional requirements of this section.
- e. Streetscape amenities shall be distributed along the full length of the street frontage rather than in one location.
- f. Required streetscape amenities can be provided within the right-of-way or on private property within five feet of the property line, provided that they are publicly accessible.
- g. For projects with multiple street frontages, each street frontage shall have a discrete calculation and requirement.
- h. Streetscape amenities shall meet the applicable specifications within the *Durham Design Manual*.

H. Additional Requirements

1. Vacant Lots

Any lot that becomes vacant due to demolition, for which a building or construction permit has expired or does not exist, shall meet the following standards in addition to any sedimentation and erosion control requirements of paragraph 12.10.4B, Stabilization of Disturbed Land:

- a. The lot shall be planted with ground cover, grass or other appropriate landscape material, or covered with hardscape material, and maintained. No bare earth shall remain visible.
- b. A wall, opaque fence, or landscaping with a minimum height of 36 inches and a maximum height of 48 inches shall be installed on the build-to line along the length of the street frontage. The screening shall be in conformance with the *Durham Design Manual*.
- c. These actions must be completed within 30 days of demolition or the expiration of a building or construction permit, whichever comes last.

2. Temporary Pedestrian Paths

Any existing pedestrian path that will be inaccessible for more than seven days shall require approval of a pedestrian traffic control plan as per MUTCD standards. Prior to the path becoming inaccessible, the pedestrian traffic control plan shall be submitted to and approved by the Transportation Director or designee, and NCDOT, as applicable, through the Construction Drawing approval process. Pedestrian traffic control plans shall include new or temporary pedestrian circulation routes and pedestrian protection measures, as appropriate.

6.12.3 Downtown Design (DD) District

A. Site Design Standards

1. Building Placement Standards

Unless otherwise specified within the individual Frontage or Building Type standards pursuant to paragraph 6.12.2D, Frontage and Building Types, the following standards shall apply for all Frontage and Building Types.

- a. Except as specified in paragraphs (1) and (2), below, the minimum percentage of building podium specified in the following table shall be met at the build-to line.

Sub-District	Percent of Building Podium Along Street Frontage (minimum)
Core (-C)	80%
Support 1 (-S1)	70%
Support 2 (-S2)	60%

- (1) Courtyard Frontage Type buildings shall meet the building placement standards found in paragraph 6.12.2D.5, Courtyard Frontage Type.
- (2) Forecourt Frontage Type buildings shall meet the minimum percentage of podium, specified in the table above, along the street frontage and within the forecourt while meeting the standards in paragraph 6.12.2D.6.b(1).
- b. A build-to line along each street frontage shall be established between 12 feet and 18 feet from the back-of-curb.
- c. Where the right-of-way line is further from the curb than the build-to line, the required build-to line shall be at the right-of-way line.

- d. Where build-to lines conflict with public utility easements or required sight distance triangles, the build-to line at the location of the conflict shall be adjusted to the minimum amount necessary to resolve the conflict.
- e. Except in DD-S2, no rear yard shall be required. In DD-S2, a 25 foot rear yard shall only be required adjacent to a residential district or residential use outside of the DD District.
- f. For projects that encompass multiple parcels, no more than 20% of the street frontage shall be allowed as side yard on any given frontage.
- g. No minimum lot width shall apply, unless otherwise specified within the applicable frontage or building type standards in paragraph 6.12.2D.
- h. Except for Monumental Buildings, the total of side yards for all sub-districts shall be a maximum of 25 feet. The maximum side yard can be increased only to the extent necessary to meet minimum fire and life safety site access code requirements.
- i. Monumental Buildings
 - (1) The minimum setback from the right-of-way shall be 20 feet.
 - (2) The minimum side yard shall be 20 feet on each side.

2. Building Height and Massing

- a. These standards shall apply to all Frontage and Building Types, except as specified below:

Building Height and Massing						
DD Sub-Districts	Height Articulation (Massing) ¹			Maximum Building Height without Provisions	Maximum Building Height with Provisions	Optional Corner Tower Elements: Additional Height Above Proposed Podium Height
	Minimum/Maximum Podium Height Ratios (Podium Height to Streetscape Width)		Upper Story Step-Back Ratios			
Core (-C)	1:1.5 min ²	1:1 max	x feet of step-back allows 2x feet of height	300 feet	Unlimited	30 feet
Support 1 (-S1)	1:2 min ²	1.5:2 max	x feet of step-back allows 1.5x feet of height	100 feet	150 feet	20 feet
Support 2 (-S2)	1:3 min ²	---	---	50 feet	---	12 feet

¹ Height articulation standards are described and illustrated in paragraph 6.12.2C.1 and 2.

² The Monumental Building Type shall be exempt from height articulation minimums.

b. Corner Tower Elements

When provided, a corner tower element shall be limited in width and depth to a maximum of 25% of the building frontage.

c. Maximum Building Height with Provisions

A maximum building height with provisions, as indicated in paragraph 6.12.3A.2.a, above, can be achieved by providing amenities for the development site pursuant to the table below. Project provisions required elsewhere in this Ordinance or in the City Code shall not qualify as provisions to achieve the height.

Project Provisions	Standards ¹	Additional Height Allowance	
		Core	Support 1
Historic Preservation	Undertake or incorporate the adaptive reuse of an existing historic structure, including local landmarks, National Register properties, or pivotal or contributing buildings in a historic district. The renovation can add onto the structure but shall not demolish any exterior historically significant portion of the structure.	45 feet	30 feet
Affordable Housing	At least 15% of the units in a project meet the definition of an Affordable Housing Dwelling Unit.	45 feet	30 feet
Green Roof	Provide a green roof in accordance with City of Durham Public Works standards, equivalent to at least 50% of the building footprint area.	15 feet	15 feet
Pedestrian Mall	Provide a pedestrian mall in accordance with paragraph 6.12.2E.1, Pedestrian Mall Standards.	45 feet	30 feet
Public Art	Provide public art in accordance with the Public Art section of the Durham Design Manual.	15 feet	15 feet
Sustainability	Provide a minimum of four of the strategies listed in the Sustainable Architecture section of the Durham Design Manual.	20 feet	20 feet
Alternative Vehicle Parking	Provide dedicated off-street parking spaces for shared car program vehicles, alternative fuel/energy vehicles, motorcycles, or scooters at a minimum of 5% of the provided parking spaces.	10 feet	10 feet
Stormwater Capture and Reuse	Provide cistern(s) to collect stormwater from onsite rooftop impervious surfaces with a minimum volume to accommodate the first one inch of rainfall. To receive this credit the runoff must be captured and used on site for the purposes of flushing toilets or irrigation.	25 feet	20 feet
Street Tree Pit Stormwater Filtration System	Provide a minimum of 50% of street trees that use a Public Works approved tree pit stormwater filtration system.	15 feet	15 feet
Additional Provisions	The Planning Director or designee shall permit additional provisions to meet this requirement so long as: <ul style="list-style-type: none"> • The provision shall be provided on site; • The provision shall be something not required elsewhere in this ordinance; and • The applicant shall demonstrate that the provision will be of community benefit. 	15 feet	15 feet

¹ These apply in addition to any other applicable Ordinance standards for the above provisions.

- d. Additional height beyond what is allowed in the DD-S1 or DD-S2 sub-districts pursuant to paragraph a, above, may be granted upon the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit, with the following additional findings:
 - (a) The proposed development allows for adequate light, air and open space access, if applicable, to adjacent properties; and
 - (b) The proposed development adequately protects surrounding properties from any adverse effects of the proposal including adverse impacts of the height of the structure considering in particular the height of structures in the immediate vicinity.

B. Over-Street Connectors

A major special use permit under Sec 3.9, Special Use Permit, shall be required for all over-street connections, including but not limited to aerial pedestrian bridges and enclosed building areas. In addition to the requirements of Sec 3.9, the applicant shall demonstrate that the project's relationship to the street and street level objectives and activities have been adequately addressed, and the City Council shall approve the permit only if it finds that:

1. The project will not create negative effects on the surrounding properties; and
2. The project will be aesthetically harmonious with or complementary to the surrounding buildings and streetscape, and will not have a substantial negative impact on downtown views.

6.12.4 Compact Design (CD) District

A. Site Design Standards

1. Building Placement Standards

Unless otherwise specified within the individual Frontage or Building Type standards pursuant to paragraph 6.12.2D, Frontage and Building Types, the following standards shall apply for all Frontage and Building Types.

- a. For all Frontage Types except as specified in paragraphs (1) and (2) below, the minimum percentage of podium along the street frontage, as specified in the table below, shall be met at the build-to line.

Sub-District	Percent of Building Podium along Street Frontage (minimum)
Core (-C)	80%
Support 1 (-S1)	70%
Support 2 (-S2)	60%
Pedestrian Business (-P)	60%

- (1) Courtyard Frontage Type buildings shall meet the building placement standards found in paragraph 6.12.2D.5, Courtyard Frontage Type.

- (2) Forecourt Frontage Type buildings shall meet the minimum percentage of podium, specified in the table above, along the street frontage and within the forecourt, while meeting the standards in paragraph 6.12.2D.6.b(1).
- b. For all Frontage Types, each project shall establish a build-to line along each street frontage between 12 feet and 18 feet from the back-of-curb.
- c. Where the right-of-way line is further from the curb than the build-to line, the required build-to line shall be at the right-of-way line. Structures shall not be allowed in the public right-of-way.
- d. Where build-to lines conflict with public utility easements or required sight distance triangles, the build-to line at the location of the conflict shall be adjusted to the minimum amount necessary to resolve the conflict.
- e. For projects that encompass multiple parcels, no more than 20% of the total street frontage shall be permitted as side yard on any single frontage.
- f. For all Building and Frontage Types, the minimum rear yard shall be 10 feet.
- g. For all Frontage Types, side yards shall be as follows:
 - (1) The maximum individual side yard shall be 20 feet.
 - (2) The maximum individual side yard can be increased only to the extent necessary to meet minimum fire and life safety site access code requirements.
 - (3) The maximum total side yard shall be 25 feet.
- h. Monumental Building Type
 - (1) The minimum setback from the right-of-way shall be 20 feet.
 - (2) The minimum side yard shall be 10 feet on each side.
- i. In CD-P and CD-S2, the maximum building length along each street frontage shall be 400 feet.
- j. No minimum lot width shall apply, unless otherwise specified within the applicable Frontage or Building Type standards in paragraph 6.12.2D.

2. Building Height and Massing

- a. These standards shall apply to all Frontage Types and Building Types, except as specified below:

Building Height and Massing						
CD Sub-Districts	Height Articulation (Massing) ¹			Maximum Building Height without Provisions	Maximum Building Height with Provisions	Optional Corner Tower Elements: Additional Height Above Proposed Podium Height
	Minimum/Maximum Podium Height Ratios (Podium Height to Streetscape Width)		Upper Story Step-Back Ratios			
Core (-C)	1:1.5 min ²	1:1 max	x feet of step-back allows 2x feet of height	90 feet	115 feet	20 feet
Support 1 (-S1)	1:2 min ²	1.5:2 max	x feet of step-back allows 1.5x feet of height	60 feet	75 feet	15 feet
Support 2 (-S2)	1:3 min ²	1:2 max		45 feet	---	---
Pedestrian Business (-P)	1:3 min ²	1.5:2 max	2x feet of step-back allows x feet of height	40 feet/ 55 feet ³	---	---

¹ Height articulation standards are described and illustrated in paragraph 6.12.2C.1 and 2.

² The Monumental Building Type shall be exempt from height articulation minimums.

³ Specific height restrictions are located in paragraph 6.12.4A.2.c.

b. Corner Tower Elements

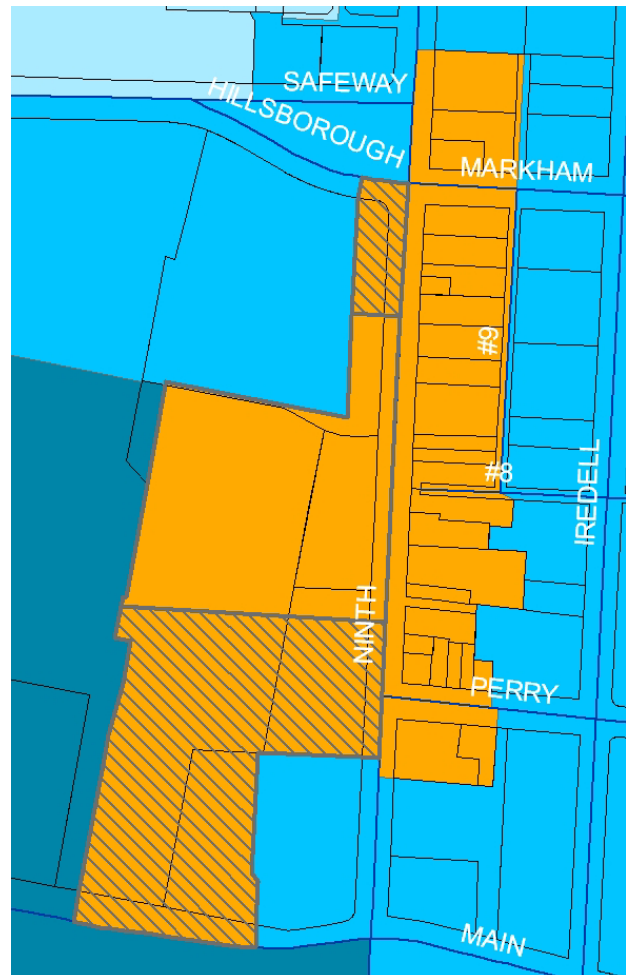
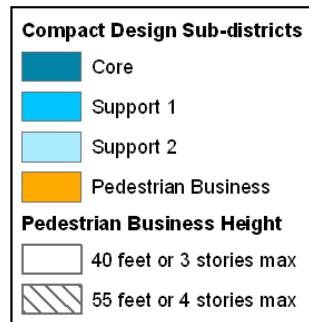
- (1) Corner tower elements shall only be permitted on building corners located at the intersection of public or private streets.
- (2) When provided, all corner tower elements on a single building shall have a combined maximum width and depth of 20% of the building frontage or 30 feet, whichever is less.

c. Pedestrian Business Sub-District (Ninth Street) Height

For properties within the Pedestrian Business sub-district (Ninth Street) the following height restrictions shall apply:

- (1) East side of Ninth Street: Building height shall not exceed 40 feet and shall not exceed three stories.
- (2) West side of Ninth Street:

- (a) Along the western Ninth Street frontage, building height shall not exceed 55 feet and shall not exceed four stories in the area extending 230 feet in from the north and south sub-district boundaries in accordance with the figure below.



- (b) If not governed by paragraph (a) above, building height shall not exceed 40 feet in height and shall not exceed three stories.

d. Maximum Height with Provisions

The Maximum Building Height with Provisions as allowed in the table in paragraph 6.12.4A.2.a, above, can be obtained only with a provision as indicated below.

- (1) A provision cannot qualify for additional height if it is a requirement elsewhere in this Ordinance or in any other code or regulation.
- (2) A provision cannot qualify for both additional height and additional density pursuant to paragraph 6.12.4A.3, Residential Density, with the exception of affordable housing which can count toward both bonuses.

(3) Eligible Provisions

The following shall be the eligible provisions that qualify for additional height.

(a) Minor special use permit

If a minor special use permit, pursuant to Sec. 3.9, Special Use Permit, is indicated as required, the following additional findings shall be made.

- i. The proposed development adequately protects surrounding properties from any adverse impacts of the additional height of the structure, considering in particular the height of structures in the immediate vicinity.
- ii. The proposed development allows for adequate light, air, and open space access, if applicable, to adjacent properties.

(b) Table of eligible project provisions for additional height.

Project Provisions	Standards ¹	Requires Minor Special Use Permit Approval
Affordable Housing, except within the CD-P District	The project implements Sec. 6.6, Affordable Bonus.	No
Pedestrian Mall	Provide a pedestrian mall in accordance with paragraph 6.12.2E.1, Pedestrian Mall Standards.	Yes
Public Parking	Provide a minimum of 20% of the parking within the development dedicated for public use. The public parking provided shall not count towards maximum parking allowed for the project.	Yes
Vertical Integration of Uses	Provide commercial use on the first floor and commercial or office use on the second floor with at least 65% of the total floor area of the structure allocated to residential uses.	Yes

¹ Additional height granted per this section is subject to the upper story step-back requirements of paragraph 6.12.2C, Height Articulation, and paragraph 6.12.4A.2.a, Building Height and Massing.

3. Residential Density

- a. Residential density in the CD District shall be in accordance with the following table:

Sub-Districts	Residential Density	
	Min. (units/acre)	Max. (units/acre)
CD-C	22	60
CD-S1	16	53
CD-S2	9	20
CD-P	16	53

- b. Additional residential density may be granted through the issuance of a minor special use permit, as per Sec. 3.9, Special Use Permit, provided that the following findings are made:
- (1) The proposed development adequately protects surrounding properties from any adverse effects of the additional density.
 - (2) The proposed development allows for adequate light, air and open space access, if applicable, to adjacent properties.
 - (3) A project provision shall be provided to compensate for the additional density in accordance with the table below.
 - (a) A provision cannot qualify for additional density if it is a requirement elsewhere in this Ordinance or in any other code or regulation.
 - (b) Only one increment of additional density is allowed.
 - (c) A provision cannot qualify for both additional density and additional height pursuant to paragraph 6.12.4A.2.d, Additional Height with Provisions.

Project Provisions	Standards	Additional Density Increment
Pedestrian Mall	Provide a pedestrian mall in accordance with paragraph 6.12.2E.1, Pedestrian Mall Standards.	15%
Public Parking	Provide a minimum of 20% of the total parking spaces within the development for public use. The public parking provided shall not count towards maximum parking allowed for the project.	15%
Vertical Integration of Uses	Provide commercial use on the first floor and commercial or office use on the second floor with at least 65% of the total floor area of the structure allocated to residential uses.	15%

- c. All projects of 200,000 square feet or greater within the S2 sub-district of the CD District shall provide the minimum residential density in accordance with the table in paragraph 6.12.4A.3.a above.

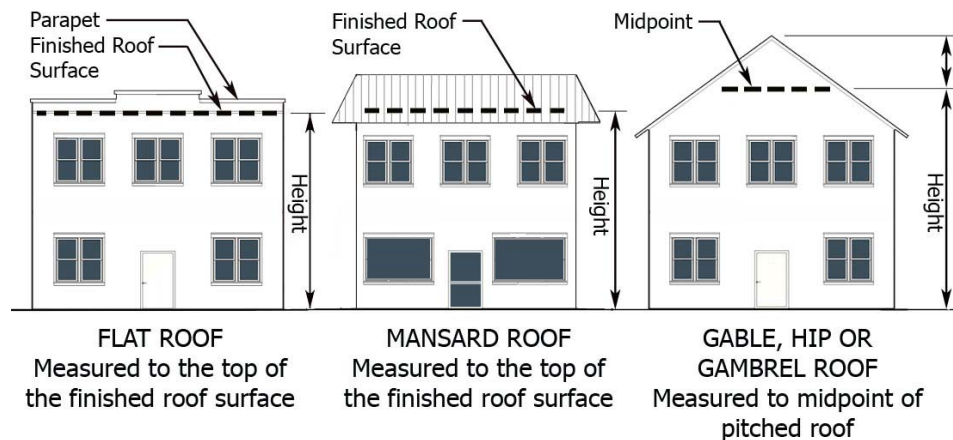
B. Additional Use Limitations

1. Commercial uses in the Support 2 sub-district of the CD District shall be limited to 20,000 square feet in size per establishment and shall only be permitted when the property has frontage on a major or minor thoroughfare as designated in the adopted Thoroughfare Plan.
2. Non-commercial uses shall not be permitted on the ground level of the Pedestrian Business sub-district (Ninth Street) of the CD District. Upper story residential uses can have ground level access points in the Pedestrian Business sub-district.

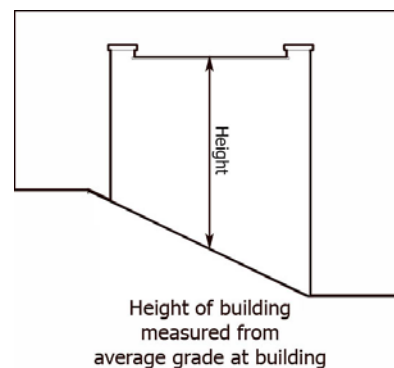
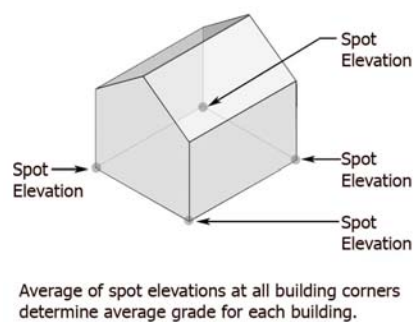
Sec. 6.13 Measurement and Computation

6.13.1 Height

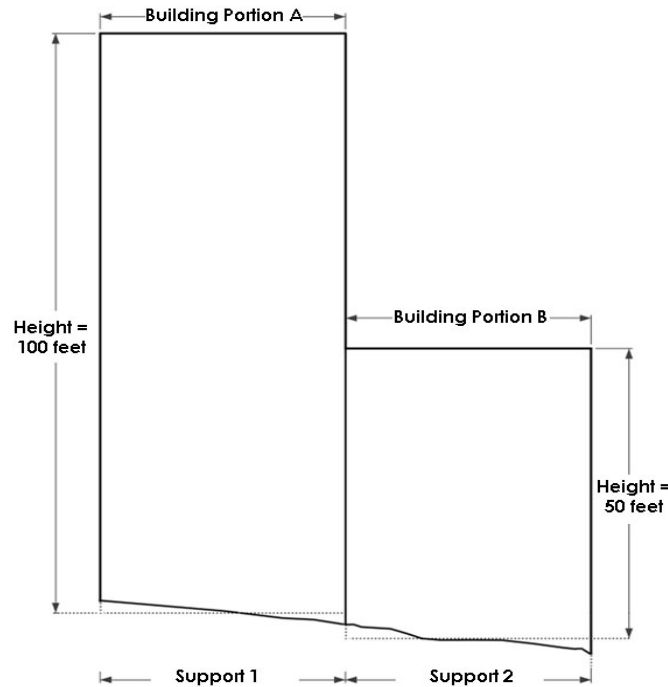
- A. Height shall be calculated by the vertical distance from the average of the finished ground level to the finished roof surface of a flat roof or the point at the average height of a roof having a pitch; except for mansard roofs, which shall be measured to the highest finished surface. For buildings with more than one facade along the street, each building facade shall be measured independently. Height for any building with multiple roof levels shall be determined by the highest roof level.



1. The average finished ground level shall be calculated by averaging the spot elevations for all building corners on a single structure. Multiple, unattached structures on the same site shall have independently-calculated average grade for the purposes of measuring the height of each individual structure.



2. Except in Design Districts, height for any building with multiple roof levels shall be determined by the highest roof level.
3. In Design Districts for buildings where multiple height standards apply, each portion of the building is allowed to build to the allowable height in the sub-district where that portion of the building is located. Height will be computed independently for each portion of the building in each sub-district.



- B. The height limitations shall not apply to steeples, decorative features including parapet walls less than four feet tall, air conditioning units, utility poles, mechanical features, penthouses for mechanical equipment or stairways, belfries, lightning rods, antennas other than those regulated in Article 5, Use Regulations, water towers, clock towers, or any other tower which is not used for transmitting and receiving electronic signals or is not a corner tower element regulated within Sec. 6.12, Design Districts.

6.13.2 Width

A. **Building Width**

Building width shall be measured by the distance along the front plane of any building (as determined by the location of an entrance fronting on a street) at the point of the street yard, except in accordance with Sec. 6.8, Infill Development in Residential Districts, when the prevailing setback shall be used to fit the point of measurement.

B. **Lot Width**

Lot width shall be measured by the distance between the side lot line (generally running perpendicular to a street), measured at the point of the street yard setback line along a straight line parallel to the front of the property line or to the chord of the front property line, or at the building line on flag lots or gore (triangular-shaped) lots.

6.13.3 Required Yards

A. **General Standards for Required Yards**

1. Required yards shall be unobstructed by objects constructed or erected in a fixed location on the ground, buildings or structures, unless allowed by standards found elsewhere in this Ordinance (for example, fences).

2. Required yards and other open areas provided for one lot or building shall not be considered as providing yard space for another building or lot.
3. Required yards shall be calculated from the adjacent property line or street right-of-way. If a new right-of-way width has been established by the adoption of an official thoroughfare planning document, then the yard requirement shall be measured from the proposed right-of-way line.

B. Encroachments into Required Yards

The following encroachment standards shall apply, so long as they do not extend in any easements:

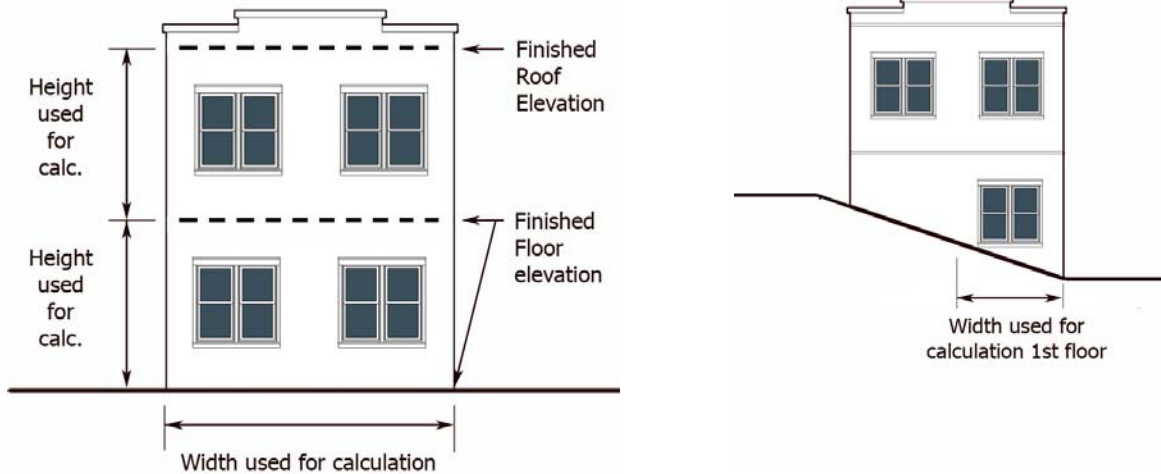
1. Chimneys, pre-fabricated chimneys, flues, or smokestacks can extend into yard spaces but shall not occupy more than 30 square feet of the required yard space.
2. Sills and ornamental features can project up to two feet into any yard.
3. Fire escapes can project up to eight feet into any required yard. Fire escapes in the DD District are permitted to extend beyond the property line.
4. Cornices, eaves, and awnings can extend up to five feet into any required yard, but shall remain at least two feet from the property line, except on zero lot line homes.
5. Marquee signs can extend into yard spaces in conformance with standards found in the Sec. 11.6, Signs Requiring Permits.
6. Pedestrian bridges, breezeways, building connections, and supports of these structures can extend into required yards upon findings by the approving authority that the connecting feature is necessary to provide safe pedestrian access or to improve transit access.
7. Security gates and guard stations can be located within any required yard.
8. Decks, uncovered terraces, and at-grade patios can extend up to four feet into any required side yard, or up to eight feet into any required street yard, or within four feet of a rear property line.
9. Uncovered steps and handicapped access ramps can be located within any yard.
10. Except in Design districts, bay windows, entrances, balconies, and similar features that are less than ten feet wide can extend up to one and one-half feet into any required yard, but shall remain at least six feet from the property line.
11. In Design districts, balconies and bay windows that extend out from the building are not required to meet step-back or build-to line requirements.
12. Mechanical equipment for residential uses, such as HVAC units, can extend into any required side yard but shall remain at least six feet from the property line.
13. Trellises and pergolas can be located within any required yard.

6.13.4 Density

Other than calculating the density bonus area pursuant to paragraph 6.4.3A, Major Roadway Density Bonus Area, all existing right-of-way shall be excluded from the calculation of the area of a project for density purposes. Right-of-way shall mean the ultimate right-of-way of a roadway as established by NCDOT or the City of Durham, as appropriate.

6.13.5 Fenestration

- A. The percentage of building facade glazing shall be calculated from the finished floor elevation to the next finished floor elevation or finished roof surface.
- B. Parapets, foundation walls, and at- or below-grade retaining walls, where there is no habitable space behind the walls, shall be excluded from glazing calculations.



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Article 7 | Design Standards

Sec. 7.1 Housing Types

7.1.1 In General

A. Applicability in Design and Planned Districts

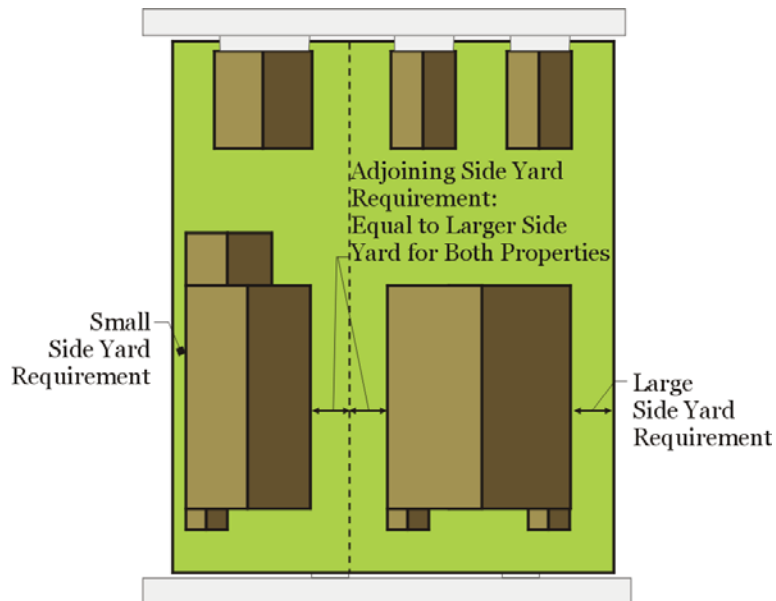
1. Housing types do not apply to the Design Districts, where all uses, including residential, shall comply with paragraph 6.12.2D, Frontage and Building Types.
2. Housing types can be used in Planned districts if the residential use is allowed according to paragraph 5.1.2, Use Table. The standards for the housing types shall conform to the standards within the Planned District.

B. Condominium Development

Condominiums shall be recorded in compliance with the North Carolina Condominium Act (NCGS §47C).

C. Yard Standards on Blocks with Mixed Housing Types

Where housing types are mixed on the same block face and adjacent to one another, the larger of the two adjoining required side yards shall be required for both units.



Commentary: This ensures that single-family detached homes abutting other housing types, such as townhouses or zero lot line units, are adequately protected.

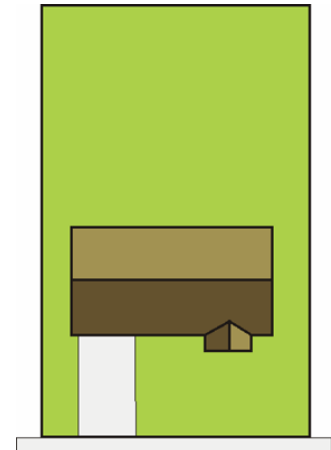
7.1.2 Single-Family Detached House

A. Description

A single-family detached house is located on an individual lot with yards on all four sides of the house. Vehicular access can take place from the front, side, or rear of the lot.

B. Development Standards

A single-family detached house shall be permitted in accordance with the table below. A single-family detached house shall also be permitted in the RR District in accordance with the standards of paragraph 6.2.1A, Dimensional Standards.



Single-Family Detached Standards	RS-20	RS-10	RS-8	RS-M	RU-5, RU-5(2)	RU-M	RC
Conventional Subdivision							
Lot Dimensions (min. square feet)							
Lot Area (w/o averaging.)	20,000	10,000	8,000	5,000	5,000	3,500	5,000
Lot Area (with averaging) ¹	17,000	8,500	6,800	4,250	4,250	2,975	4,250
Lot Width (feet)	100	75	60	35	45	35	35
Yards (min. feet) ²							
Street Yard (adjoining collector or greater street)	35	25	25	25	20	15 ³	10 ³
Street Yard (adjoining local street)	35	25	25	20	20	15 ³	10 ³
Street Yard (with rear vehicular or alley access)	5	5	5	5	5	5	5
Side Yard (single)	12	10	9	6	6	6	6
Side Yard (total)	30	24	22	15	15	15	15
Rear Yard	25	25	25	25	25	25	25
Cluster Subdivision							
Lot Dimensions (min.)							
Lot Area (square feet)	10,000	5,000	4,000	---	3,500	---	---
Lot Width (feet)	75	40	40	---	40	---	---
Yards (min. feet)							
Street Yard	25	20	20	---	15 ³	---	---
Street Yard (with rear vehicular or alley access)	5	5	5	---	5	---	---
Side Yard (single)	9	6	6	---	5	---	---
Side Yard (total)	22	13	13	---	12	---	---
Rear Yard	25	25	25	---	25	---	---

¹ Lot area with averaging may only be used if the requirements of paragraph 6.3.3C, Lot Averaging, paragraph 6.4.3C, Lot Averaging, paragraph 6.5.3B, Lot Averaging, as appropriate are met.

² Yard modifications may be required pursuant to an adopted corridor study, a neighborhood protection overlay, or through application of infill regulations (Sec. 6.8, Infill Development in Residential Districts).

³ Shall be 20 feet with front-loaded vehicular access or driveways.

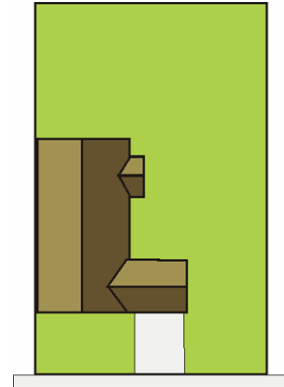
7.1.3 Zero Lot Line House

A. Description

A zero lot line house is a single-family detached house positioned on one lot line without any setback from that lot line, with yards on the other three sides of the building including a wider side yard on one side.

B. Development Standards

A zero lot line house shall be permitted in accordance with the table below.



Zero Lot Line House Standards	RS-10	RS-8	RS-M	RU-5, RU-5(2)	RU-M	RC
Conventional Subdivision						
Lot Dimensions (min. square feet)						
Lot Area (w/o averaging)	10,000	8,000	5,000	5,000	3,500	5,000
Lot Area (with averaging) ¹	8,500	6,800	4,250	4,250	2,975	4,250
Lot Width (feet)	75	60	35	45	35	35
Yards (min. feet) ²						
Street Yard (adjoining collector or greater street)	25	25	25	20	15 ³	10 ³
Street Yard (adjoining local street)	25	25	20	20	15 ³	10 ³
Street Yard (with rear vehicular or alley access)	5	5	5	5	5	5
Side Yard (single)	0	0	0	0	0	0
Side Yard (total)	20	18	12	12	12	12
Rear Yard	25	25	25	25	25	25
Cluster Subdivision						
Lot Dimensions (min.)						
Lot Area (square feet)	5,000	4,000	---	3,500	---	---
Lot Width (feet)	40	40	---	40	---	---
Yards (min. feet)						
Street Yard	20	20	---	15 ³	---	---
Street Yard (with rear vehicular or alley access)	5	5	---	5	---	---
Side Yard (single)	0	0	---	0	---	---
Side Yard (total)	12	12	---	10	---	---
Rear Yard	25	25	---	25	---	---

¹ Lot area with averaging may only be used if the requirements of paragraph 6.3.3C, Lot Averaging, paragraph 6.4.3C, Lot Averaging, paragraph 6.5.3B, Lot Averaging, as appropriate are met.

² Yard modifications may be required pursuant to an adopted corridor study, a neighborhood protection overlay, or through application of infill regulations (Sec. 6.8, Infill Development in Residential Districts).

³ Shall be 20 feet with front-loaded vehicular access or driveways.

C. Access

Where a developed alley is provided, all vehicular access shall be taken from the alley.

D. Designation on Plat

The subdivision shall be designated as a zero lot line subdivision on the plat at the time of approval.

E. Easement

Easement agreements shall be recorded to allow maintenance and access for that side of the dwelling adjacent to the property line.

F. Privacy

1. On the property line that the structure is built to, a privacy fence or wall at least six feet high is required between lots, to the rear of the structure.
2. If the side wall of the house is located on or within three feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot shall not be allowed. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, shall be allowed.

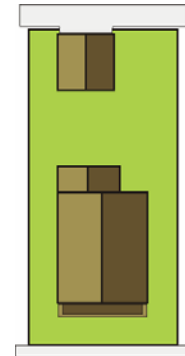
7.1.4 Traditional House

A. Description

A traditional house is a single-family detached house that is set closer to the street than a conventional single family detached house and shall only have vehicular access from the rear. It has yards on each side of the building.

B. Development Standards

A traditional house shall be permitted in accordance with the table below.



Traditional House Standards	RU-5, RU-5(2)	RU-M	RC
Conventional Subdivision			
Lot Dimensions (min. square feet)			
Lot Area (w/o averaging)	5,000	3,500	5,000
Lot Area (with averaging) ¹	4,250	2,975	4,250
Lot Width (feet)	45	35	35
Yards (min. feet) ²			
Street Yard	5	5	5
Side Yard (single)	6	6	6
Side Yard (total)	15	15	15
Rear Yard	25	25	25
Cluster Subdivision			
Lot Dimensions (min.)			
Lot Area (square feet)	3,500	---	---
Lot Width (feet)	35	---	---
Yards (min. feet)			
Street Yard	5	---	---
Side Yard (single)	5	---	---
Side Yard (total)	12	---	---
Rear Yard	25	---	---

¹ Lot area with averaging may only be used if the requirements of paragraph 6.4.3C, Lot Averaging, and paragraph 6.5.3B, Lot Averaging, as appropriate, are met.

² Yard modifications may be required pursuant to an adopted corridor study, a neighborhood protection overlay, or through application of infill regulations (Sec. 6.8, Infill Development in Residential Districts).

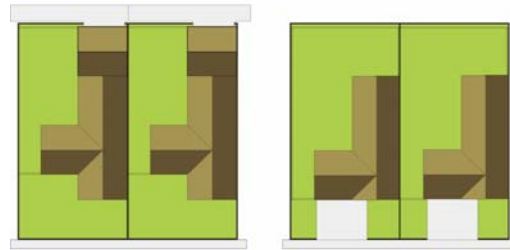
C. Access

Where a developed alley is provided, all vehicular access shall be taken from the alley.

7.1.5 Patio House

A. Description

The patio house is a single-family detached house similar to a zero lot line house that is placed on a small lot.



B. Development Standards

A patio house shall be permitted in accordance with the table below.

Patio House Standards	Suburban	Urban and Compact Neighborhood
Site Area (min. square feet)		
Per Group	25,000	25,000
Per Dwelling Unit	3,000	3,000
Lot Dimensions (min.)		
Lot Width (feet)	35	35
Yards (min. feet)		
Street Yard	25 ^{1,2}	12 ¹
Street Yard with Front Vehicular Access (from ROW)	25 ^{1,3}	20 ¹
Street Yard with Rear Vehicular Access (from alley)	5	5
Rear Yard	25	25
Building Separation	10	10
Patio (min.)		
Area (square feet)	1,000	1,000
Width (feet)	20	20

¹ Yard modifications can be required pursuant to an adopted corridor study, a neighborhood protection overlay, or through application of infill regulations (Sec. 6.8, Infill Development in Residential Districts).

² Yards can be reduced to as little as 12 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

³ Front vehicular access can be reduced to as little as 20 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

C. Access

Where a developed alley is provided, all vehicular access shall be taken from the alley.

D. Privacy

1. On the property line that the structure is built to, a privacy fence or wall at least six feet high shall be required between lots, to the rear of the structure.
2. If the side wall of the house is located on or within three feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot shall not be allowed. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, shall be allowed.

7.1.6 Semi-Attached House

A. Description

A semi-attached house is a single-family house with a shared common wall along one of the lot lines that separates the two lots.



B. Development Standards

A semi-attached house shall be permitted in accordance with the table below.

Semi-Attached House Standards	Suburban	Urban and Compact Neighborhood
Site Area (min. square feet)		
Per Building	7,000	7,000
Per Dwelling Unit	3,000	3,000
Lot Dimensions (min.)		
Lot Width (feet)	35	35
Yards (min. feet)		
Street Yard	25 ^{1,2}	15 ¹
Street Yard with Front Vehicular Access (from ROW)	25 ^{1,3}	20 ¹
Street Yard with Rear Vehicular Access (from alley)	5	5
Side Yard (on unattached side)	8	8
Rear Yard	25	25

¹ Yard modifications can be required pursuant to an adopted corridor study, a neighborhood protection overlay, or through application of infill regulations (Sec. 6.8, Infill Development in Residential Districts).

² Yards can be reduced to as little as 15 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

³ Front vehicular access can be reduced to as little as 20 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

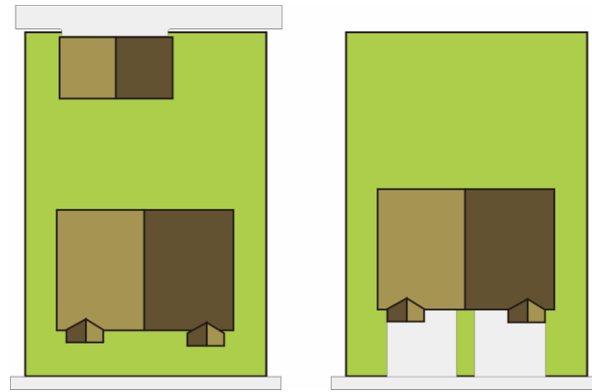
C. Access

Where a developed alley is provided, all vehicular access shall be taken from the alley.

7.1.7 Duplex

A. Description

A duplex is a two-family dwelling in a single structure on a single lot. Individual units can be located on separate floors or side-by-side.



B. Development Standards

A duplex shall be permitted in accordance with the table below.

Duplex Standards	Suburban	Urban and Compact Neighborhood
Site Area (min. square feet) Per Dwelling Unit	3,750	3,500
Lot Dimensions (min.) Lot Width (feet)	60	50
Yards (min. feet)		
Street Yard	25 ^{1,2}	15 ¹
Street Yard with Front Vehicular Access (from ROW)	25 ^{1,3}	20 ¹
Street Yard with Rear Vehicular Access (from alley)	5	5
Side Yard	8	8
Rear Yard	25	25

¹ Yard modifications can be required pursuant to an adopted corridor study, a neighborhood protection overlay, or through application of infill regulations (Sec. 6.8, Infill Development in Residential Districts).

² Yards can be reduced to as little as 15 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

³ Front vehicular access can be reduced to as little as 20 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

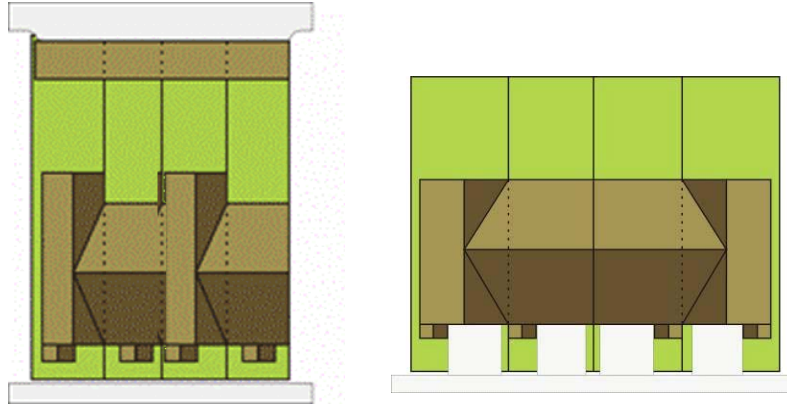
C. Access

Where a developed alley is provided, all vehicular access shall be taken from the alley.

7.1.8 Townhouse

A. Description

A townhouse is a building made up of three or more attached units where the units are lined up in a row and share side walls.



B. Development Standards

1. A townhouse shall be permitted in accordance with the table below.

Townhouse Standards	Urban and Compact Neighborhood	
	Suburban	Urban and Compact Neighborhood
Yards (min. feet)		
Street Yard	25 ^{1,2}	12 ¹
Street Yard with Front Vehicular Access (from ROW)	25 ^{1,3}	20 ¹
Street Yard with Rear Vehicular Access (from alley)	5	5
Rear Yard	20	20
Distance between Building and Shared Parking (minimum feet)	12	12
Building Separation (minimum feet)	10	10

¹ Yard modifications can be required pursuant to an adopted corridor study, a neighborhood protection overlay, or through application of infill regulations (Sec. 6.8, Infill Development in Residential Districts).

² Yards can be reduced to as little as 12 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

³ Front vehicular access can be reduced to as little as 20 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

2. In order to provide visual diversity, no more than four contiguous townhouse units shall be allowed with the same setback and the same facade treatment. Variations in setback shall be at least three feet. Townhouses in a Historic District and Landmarks Overlay may be exempted from this requirement with the approval of the Historic Preservation Commission.

Sec. 7.1 Housing Types

C. Access

Where a developed alley is provided, all vehicular access shall be taken from the alley.

D. Privacy

Townhouses shall have a front, side, or rear privacy yard having a minimum area of 100 square feet on each lot.

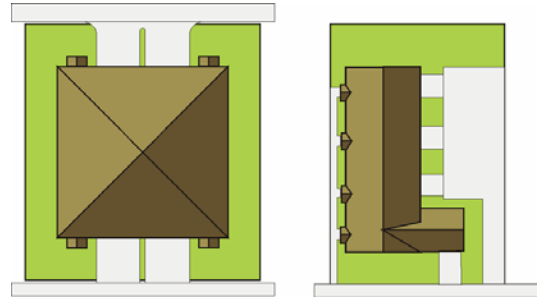
E. Residential Protection

Common recreation areas, such as a clubhouse, swimming pool, and/or tennis, volleyball, or basketball courts, shall be oriented internally or along major roadways, and away from residential development on neighboring properties. All such facilities shall be visible from and have substantial access to a street.

7.1.9 Multiplex

A. Description

A multiplex is three or four individual units consolidated into a single structure using common walls on a single lot. Individual units can be located on separate floors or side-by-side. Parking is often shared in a single consolidated area, even when garages and carports are used.



B. Development Standards

A multiplex shall be permitted in accordance with the table below.

Multiplex Standards	Suburban	Urban and Compact Neighborhood
Lot Dimensions (min.)		
Lot Width (feet)	70	70
Yards (min. feet)		
Street Yard	25 ^{1,2}	15 ¹
Street Yard with Front Vehicular Access (from ROW)	25 ^{1,3}	20 ¹
Street Yard with Rear Vehicular Access (from alley)	5	5
Distance between Building and Parking Lot	12	12
Rear Yard	10	10
Building Separation	10	10

¹ Yard modifications can be required pursuant to an adopted corridor study, a neighborhood protection overlay, or through application of infill regulations (Sec. 6.8, Infill Development in Residential Districts).

² Yards can be reduced to as little as 12 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

³ Front vehicular access can be reduced to as little as 20 feet if the structures are located interior to a project and do not front on a street classified as a collector or greater.

C. Access

Where a developed alley is provided, all vehicular access shall be taken from the alley.

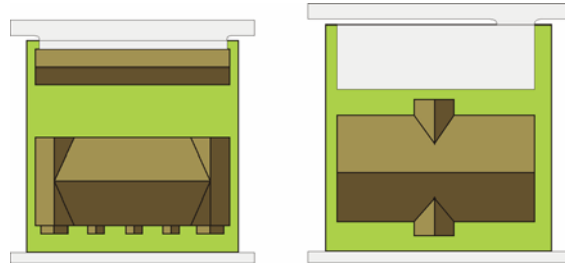
D. Location of Common Recreation Facilities

Common recreation areas, such as a clubhouse, swimming pool, and/or tennis, volleyball, or basketball courts, shall be oriented internally or along major roadways, and away from residential development on neighboring properties. All such facilities shall be visible from and have substantial access to a street.

7.1.10 Apartment

A. Description

An apartment is a multifamily housing type on a single tract or parcel of land containing three or more units. Apartments can vary in height; the individual units can be located on separate floors or side-by-side. Parking is often shared in a consolidated area, even when garages and carports are used.



B. Development Standards

Apartments shall be permitted in accordance with the table below.

Apartment Standards	
Lot Dimensions	
Lot Width (min. feet)	75
Yards (min. feet)	
Street Yard ¹	25
Street Yard with Rear Vehicular Access (from alley)	5
Distance between Building and Parking Lot	12
Side Yard	8
Rear Yard	25
Building Separation	10

¹ Yard modifications may be required pursuant to an adopted corridor study, a neighborhood protection overlay, or through application of infill regulations (Sec. 6.8, Infill Development in Residential Districts).

C. Location of Common Recreation Facilities

Common recreation areas, such as a clubhouse, swimming pool, and/or tennis, volleyball, or basketball courts, shall be oriented internally or along major roadways, and away from residential development on neighboring properties. All such facilities shall be visible from and have substantial access to a street.

Sec. 7.2 Open Space

7.2.1 Purpose

Open space adds to the visual character and uniqueness of each development and allows for recreational and aesthetic enjoyment by the residents. In the Rural Tier, open space is intended to serve as land preserved for passive enjoyment. In the Suburban and Urban Tiers, improved open space provides centrally located community gathering spots, and play spaces that are integral to the livability of the neighborhoods, while the preservation of natural areas ensures habitat. In the Compact Neighborhood Tier, a limited quantity of open space is required as relief from the intensity of the built environment. Except for paragraph 7.2.5, Ownership and Management of Open Space, the requirements of this section do not apply to conservation subdivisions under paragraph 6.2.4, Conservation Subdivision.

7.2.2 Required Open Space

- A.** Open space shall be required in all districts in accordance with Article 6, District Intensity Standards, except that certain residential developments can make payment in lieu of providing required open space provided that the development:

- 1.** Is not a conservation subdivision under paragraph 6.2.4, Conservation Subdivision;
- 2.** Is not a cluster subdivision under Sec. 6.7, Cluster Subdivision;
- 3.** Contains ten or fewer units; and
- 4.** Contains no engineered stormwater controls.

Payment in lieu of required private open space for recreational purposes under this section is available in addition to payment-in-lieu available under Sec. 12.4, Pedestrian and Bicycle Mobility, and Sec. 12.5, Recreation Land.

- B.** Payment-in-lieu shall be an amount equivalent to the tax value of the amount of usable property that would have been required for open space. Payments, when authorized, shall be expended within the respective recreation district within which collected.
- C.** In Cluster Subdivisions, the quantity of open space shall be equal to the reduction in total lot area, in addition to the open space required in the zoning districts in Sec. 6.3, Residential Suburban Development Intensity, Sec. 6.4, Residential Urban Development Intensity, or Sec. 6.5, Residential Compact Development Intensity, as applicable.

7.2.3 Use of Required Open Space

- A.** Where open space is required, at least one-third shall consist of recreational open space per the types and percentages indicated in the following table:

1. Table of Recreational Open Space

Types of Recreational Open Space	Maximum Percent by Tier		
	Suburban	Urban	Compact
Property developed for active recreational purposes (ballfields with fixed improvements (eg. Goals, backstops, bleachers, etc.), tennis or basketball courts, golf courses, swim clubs, etc.); all-weather trails; playgrounds	100%	100%	100%
Benches, picnic tables, shelters, gazebos, multi-use fields	30%	30%	30%
Publicly accessible plazas and courtyards	---	100%	100%

2. Exemptions

Recreational open space is not required in the Rural Tier or for development pursuant to Sec. 6.9, Nonresidential and Group Living Development in Residential Districts.

3. Except for walking paths and bicycle trails, recreational open space areas shall have at least one side with street frontage of at least 50 feet in length, and shall be accessible to residential development by sidewalks, pursuant to Article 12, Infrastructure and Public Improvement.
 4. In the Urban Tier, recreational open space shall be located so that at least 95% of the residential units in the subdivision or development are within a 1,300-foot walking distance of useable open space.
 5. In the Suburban Tier, recreational open space shall be located so that at least 95% of the residential units in the subdivision or development are within a 2,600-foot walking distance of usable open space.
 6. In the MU District, recreational open space shall be located in a central commons area around which different uses are located.
 - a. If the development is greater than 100 acres, multiple common areas shall be provided.
 - b. Central commons areas are not required if the entire mixed use development is solely vertically integrated.
- B.** The remaining required open space, and 100% of required open space where recreational open space is not required as indicated in paragraph 7.2.3A.2, shall consist of the type and percentages indicated in the following table:

Open Space Use	Maximum Percent by Tier			
	Rural	Suburban	Urban	Compact
Natural or Vegetated				
Agriculture, horticulture, silviculture or pasture uses	100%	50%	---	---
Naturally vegetated or revegetated to appear naturally vegetated.	100%	100%	100%	100%
Severe development constraints or other conditions that affect their usability by residents of the development, including properties in the flood fringe, floodway, water bodies, exceptionally low or wet soils, or steep slopes.	100%	50%	100%	100%
Durham Inventory Sites	100%	100%	100%	100%
Tree protection areas, project boundary buffers	100%	100%	100%	100%
Recreational				
Property developed for active recreational purposes (ballfields with fixed improvements (eg. Goals, backstops, bleachers, etc.), tennis or basketball courts, golf courses, swim clubs, etc.); all-weather trails; playgrounds).	100%	50%	50%	50%
Benches, picnic tables, shelters, gazebos, multi-use playfields	100%	50%	50%	50%
Publicly accessible plazas and courtyards	---	---	100%	100%
Other				
Stormwater management and community wastewater disposal systems. Easements for drainage, access and underground utilities	25%	25%	50%	50%
Land dedicated per Sec. 12.5, Recreation Land	100%	100%	100%	100%

- C. Notwithstanding the above requirements, area within required riparian buffers can be used to satisfy any open space requirement.

7.2.4 Open Space Calculation

A. Exclusions

- Streets, driveways, vehicular use areas, and yard spaces provided for residences shall not be counted toward the open space requirement.
- Sidewalks and walkways required pursuant to Section 12.4, Pedestrian and Bicycle Mobility, shall not qualify as “all-weather trails” and shall not be counted towards open space requirements.

B. Minimum Dimension

- Within the Compact Neighborhood Tier, a horizontal dimension of at least ten feet shall be the minimum required to be considered open space.
- Within the Rural, Suburban, and Urban Tiers, a horizontal dimension of at least 25 feet shall be the minimum required to be considered open space.

C. Individual Calculations

Unless otherwise noted below, the gross square footage of the open space area shall be utilized in calculating compliance with open space requirements.

- To calculate trails, the square footage of the trail surface shall be used.

2. To calculate benches and picnic tables, the square footage of each amenity plus a two-foot wide walk zone around each amenity shall be used.
3. To calculate playgrounds, the square footage of each playground structure plus a six-foot wide walk zone around each structure shall be used.
4. Areas of overlapping walk zones shall be counted once.

7.2.5 Ownership and Management of Open Space

- A. Land set aside as open space in residential developments shall be held in common ownership or dedicated to the public rather than platted as part of individual private lots.
- B. Prior to approval of a final plat, a program for continued maintenance of all open space areas shall be submitted. The submission shall include agreements, contracts, deed restrictions, sureties, or other legal instruments acceptable to the City or County, as appropriate, to guarantee the provision and continued maintenance of such common areas and facilities.
- C. The open space shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. The instrument shall be one of the following:
 1. A permanent conservation easement in favor of either:
 - a. A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements (the organization shall be *bona fide* and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions). If the entity accepting the easement is not the City or the County, then a third party right of enforcement favoring the City or the County shall be included in the easement; or
 - b. A governmental entity with an interest in pursuing goals compatible with the purposes of this section acceptable to the City or County, as appropriate.
 2. A permanent restrictive covenant for conservation purposes in favor of a governmental entity.
 3. An equivalent legal tool that provides permanent protection, if approved by the City or County, as appropriate.
 4. Dedication of the land to an established homeowner's association (with legal standing in the property) that accepts permanent maintenance responsibility.
- D. The instrument for permanent protection shall include clear restrictions on the use of the open space. These restrictions shall include all restrictions contained in this Article, as well as any further restrictions the applicant chooses to place on the use of the open space.
- E. Open space that has been dedicated to an established homeowner's association can be transferred with a permanent conservation easement to a land trust or similar conservation-

oriented non-profit organization with legal authority to accept such easements pursuant to paragraph 7.2.5C.1.a above.

Sec. 7.3 Design Standards

7.3.1 Facade/Roofline Treatment

- A.** This section applies to all non-industrial facilities, except in Design Districts, with exterior elevations that are greater than 100 feet in total length or diameter and visible from a public right-of-way or from adjacent residential development.
- B.** All applicable structures shall be required to incorporate variations in the facades and roofline in order to ensure visual interest by the following standards:
 - 1.** Incorporate variations in the facade, such as recesses and projections, door and window rhythm, or other architectural detailing. Changes of materials can also be used to meet this requirement so long as materials changes occur at a change of plane, such as a recess, projection, or inside corner; and
 - 2.** Incorporate variations in the roofline treatment, such as stepped parapets, multiple roof forms, dormers, and corner tower elements.

7.3.2 Canopies

A. General Standards

- 1.** Canopies in nonresidential zones can extend into the required yard but shall be at least five feet from any property line and shall not project into any utility easement.
- 2.** Display or storage shall not be permitted as the primary use under the canopy unless outdoor displays and outdoor storage are allowed in the zoning district in accordance with Sec. 7.5, Outdoor Display and Storage.

B. Fuel Canopies

- 1.** The maximum distance to the highest point on the fascia shall be 19-1/2 feet as measured from the highest point of the highest grade under the canopy.
- 2.** All light fixtures mounted in fuel canopies shall be recessed.

Sec. 7.4 Outdoor Lighting

7.4.1 Purpose

The purpose of these standards is to assure that adequate exterior lighting is provided for nonresidential and multi-family developments to facilitate crime prevention, security, and safe passage, and that exterior lights be shielded so that the light cast beyond the property line does not exceed the limits in accordance with these standards.

7.4.2 Applicability

- A.** Adequate lighting shall be provided in nonresidential and multifamily developments conforming to professional engineering standards.
- B.** The following shall be exempt from these provisions:
 - 1.** Outdoor lights used for a temporary event; permitted through a temporary use permit.
 - 2.** Outdoor lights used exclusively for recreational activities, concerts, plays or other outdoor events that are open to the public, provided that the light fixtures are located at least 100 feet from any adjacent residential use and the event or function meets all other applicable zoning requirements. Such lighting shall not be illuminated between the hours of 12:00 a.m. and 8 a.m. and between 1:00 a.m. and 8 a.m. Friday and Saturday except in the UC or UC-2 districts and the Downtown Tier.
 - 3.** Outdoor lighting exempted pursuant to 1 and 2 above shall only be illuminated while the activity takes place and during high traffic periods immediately before and after the event.

7.4.3 Standards

- A.** All site lighting shall be designed so that the level of illumination as measured in foot-candles (fc) at any one point meets the standards in the table below with minimum and maximum levels measured on the pavement within the lighted area.

Type of Lighting	LIGHT LEVEL (in foot-candles)	
	Minimum At Any Point	Maximum At Any Point
Architectural Lighting, Landscape or Decorative Lighting, Walkways except for those listed below	0.0	5.0
Canopy Area Lighting	2.0	24.0
Open Air Pedestrian Passages and Malls (Sec. 6.12)	0.5	15.0
Multifamily Parking Lot	0.5	8.0
Nonresidential and Multifamily Entrances	1.0	15.0
Nonresidential Parking Lot	0.5	10.0
On-site walkways between building entrances, between parking and a building entrance, or serving to meet sidewalk requirements per Sec. 12.4, Pedestrian and Bicycle Mobility.	0.2	5.0
Storage Area (security lighting)	0.5	10.0
Vehicle Sales and Display	0.5	24.0

B. The maximum illumination permitted at the edge of a property line shall be as set forth below. Where a development is unified with shared parking or other measures shown on a site plan, the maximum illumination levels shall apply only to the exterior lot lines of the project (any interior lot lines shall be exempt from this paragraph).

1. The maximum illumination at the edge of the property line adjacent to a residential zoning district shall be 0.5 foot-candles.
2. The maximum illumination at the edge of the property line adjacent to nonresidential zoning district shall be 5.0 foot-candles.
3. The maximum illumination at the edge of the property line adjacent to a street shall be 5.0 foot-candles.

C. Full-Cutoff Lighting

The maximum height for directional or full cut-off lighting fixtures (fixtures designed to ensure that no light is emitted above a horizontal line parallel to the ground) shall be 30 feet above grade.

D. Non-Directional Lighting

The maximum height for non-directional lighting fixtures (fixtures designed to allow light to be emitted above a horizontal line parallel to the ground) shall be 15 feet above grade. Non-directional lighting fixtures shall be translucent or have baffles to prevent views of the light source.

E. Canopy Lighting

Under canopy lighting shall be restricted to lighting fixtures (including lenses) that do not project below the bottom of the canopy.

F. Glare

Lighting shall be oriented not to direct glare or excessive illumination onto streets in a manner that may distract or interfere with the vision of drivers on such streets.

G. Accent Lighting

Lighting fixtures used to accent architectural features, landscaping or art shall be located, aimed or shielded to minimize light spill into the night sky.

H. Blinking or Flashing Lights

Blinking or flashing lights shall be prohibited unless the lights are required as a safety feature (e.g. beacons on towers) or permitted as part of a sign in accordance with Article 11, Sign Standards.

I. Non-Conformities

Lighting fixtures existing as of June 12, 2000 may remain, and shall be considered nonconforming structures. Modifications, replacement or expansions, shall conform to the standards of this Ordinance.

Sec. 7.5 Outdoor Display and Storage

7.5.1 Applicability

- A.** Regulations governing outdoor storage and display shall apply in all non-residential districts.
- B.** Outdoor storage regulations shall not apply to agricultural uses pursuant to Sec. 5.1, Use Table.

7.5.2 Outdoor Display

- A.** Outdoor display is defined as the display of products actively available for sale, but does not include products in closed boxes, crates, other kinds of shipping containers, or uses considered outdoor storage in accordance with paragraph 7.5.3, Outdoor Storage, below.
- B.** Except in association with agricultural uses, outdoor display shall be indicated on a site plan illustrating the extent of the permitted area for outdoor display pursuant to the standards below:
 - 1.** All products displayed shall be located outdoors only during the hours the use is open for business;
 - 2.** The display area shall be located no closer than five feet from any public entrance;
 - 3.** The display area shall occupy no more than 50% of the building frontage;
 - 4.** The display area shall not block sidewalks or parking areas, and shall not impede pedestrian or vehicular circulation; and
 - 5.** The display area shall not be located in a public right-of-way except in the Downtown Tier, subject to other applicable requirements.
- C.** For outdoor display associated with agricultural uses pursuant to Sec. 5.1, Use Table, only the following shall apply.
 - 1.** No site plan is required.
 - 2.** Outdoor display areas shall not block sidewalks or parking areas, and shall not impede pedestrian or vehicular circulation; and
 - 3.** Outdoor display areas shall not be located in a public right-of-way except in the Downtown Tier, subject to other applicable requirements.

7.5.3 Outdoor Storage

A. General

Outdoor storage is more intensive than outdoor display. Materials stored in outdoor storage are not normally brought indoors overnight.

B. Class A Outdoor Storage

1. Class A outdoor storage is defined as garden supplies, building supplies, plants, vehicle sales and services, manufactured home sales, play equipment, and other similar items.
2. Areas used for Class A outdoor storage shall be permitted following review and approval of a site plan illustrating the extent of the area proposed for outdoor storage, provided it meets the following standards:
 - a. No outdoor storage shall be allowed in street yards or within 15 feet of any public right-of-way, whichever is greater.
 - b. No outdoor storage shall be permitted within required vehicular use areas.
 - c. Outdoor storage can be located to the side of a building, provided it is not located within the side yard.
 - d. Any rear yard can be used for outdoor storage purposes, except in the SRP District.

C. Class B Outdoor Storage

1. Class B outdoor storage is defined as material stored in crates, boxes, or shipping containers; lumber yards; pipe; wrecking, junk, and salvage yards; vehicle storage yards; and other similar uses.
2. In addition to the requirements of paragraph B.2 above, areas used for Class B outdoor storage shall be screened from view from the public right-of-way, public vehicular use areas, or adjacent residential development pursuant to Sec. 9.7, Screening.

D. Outdoor Storage in SRP District

1. Outdoor storage shall not be permitted in required yards.
2. Outdoor storage shall be screened according to Class B standards.

Sec. 7.6 Utility and Solid Waste Collection Facilities

7.6.1 Applicability

This section shall apply to all on-site solid waste, utility, and other mechanical equipment facilities serving non-residential and multifamily development.

7.6.2 Location

- A.** All utilities (including heating or air conditioning units and other mechanical equipment) and solid waste collection facilities shall be located on the same lot as the use served. Off-site solid waste collection facilities are allowed with documentation of a shared facility agreement between property owners.
- B.** Such facilities shall be located beyond the minimum or maximum street yard, as applicable.

7.6.3 Screening

All screening of utility and solid waste facilities shall be pursuant to Sec. 9.7, Screening.

7.6.4 Additional Requirements for Solid Waste Collection Facilities

- A.** All required solid waste collection facilities shall be designed with appropriate means of access to a street or alley in a manner that will least interfere with traffic movement, and will most facilitate the service of the facilities. Site design shall not create a condition that requires solid waste collection vehicles to back out of sites.
- B.** When the service side is visible from an adjacent property line, or adjacent public streets or public trails, access gates or doors with opacity of at least 85% shall be required.
- C.** Space allocated to any solid waste facility shall not be used to satisfy the space requirements for off-street parking or loading facilities, nor shall any parking or loading spaces be used to satisfy the space requirements for any solid waste facility.
- D.** All solid waste collection facilities shall be designed to prevent wind-blown debris from leaving the site.
- E.** All food-related businesses shall provide water quality treatment in conformance with applicable standards and design guidelines for runoff from solid waste collection facilities.
- F. Additional Requirements for Design Districts**
 - 1.** All new development, not including parking structures, of 100,000 square feet or greater shall provide trash compactors on site.
 - 2.** Where shared solid waste collection facilities exist on sites to be redeveloped, the redevelopment shall continue to accommodate sufficient shared facilities.
 - 3.** A site can be designed to allow solid waste collection vehicles to back a maximum of 40 feet into sites given the following criteria:

- a. Pickup only occurs during off-peak hours, as determined by the Transportation Director or designee; and
 - b. The street is not a State-maintained road.
- 4. A dedicated area for the separation, collection, and storage of recyclables shall be provided.

Sec. 7.7 Flagpoles and Flags

7.7.1 Definitions

- A. The term flag in this section shall mean a piece of fabric or other flexible material solely containing distinctive colors, patterns, standards, words, or emblems used as a symbol of an organization or entity, including but not limited to political jurisdictions, such as the United States.
- B. Flags displaying a logo, message, statement, or expression relating to commercial interests, and banners otherwise not meeting the definition of a flag shall also conform with all sign regulations in Article 11, Sign Standards.
- C. Reference to flagpole height refers to vertical flagpoles.
- D. References to the number of flags and flagpoles and flag dimensions refer to both vertical flagpoles and mast arm flagpoles, such as staffs extending at an angle from a building.

7.7.2 Requirements

- A. Except as otherwise provided herein flags shall be displayed on flagpoles.
- B. In nonresidential zoning districts, flagpoles shall not exceed the maximum height allowed in the zoning district or 70 feet, whichever is less.
- C. Flagpoles shall not be placed on top of buildings unless they are located in the Downtown Tier.
- D. In residential districts, flagpoles shall not exceed 25 feet in height unless a special use permit is granted by the Board of Adjustment. A fee shall not be charged for a use permit request for a flag in a residential district.
- E. A vertical flag pole shall be set back from all property boundaries a distance which is at least equal to the height of the pole.
- F. The maximum dimensions of any flag shall be proportional to the flagpole height. The hoist side of the flag shall not exceed 20% of the vertical height of the pole. In addition, flags are subject to the following dimensional limitations.

Pole Height (feet)	Max. Flag Size (square feet)
Up to 25	24
25 to 29	28
30 to 34	40
35 to 39	60
40 to 49	96
50 to 59	150
60 to 70	216

- G. Each property shall be allowed a maximum of three flagpoles unless a special use permit is granted by the Board of Adjustment.

- H. A maximum of two flags shall be allowed per flagpole.
- I. The flag and flagpole shall be maintained in good repair. A flagpole with broken halyards shall not be used and flags which are torn or frayed shall not be displayed.
- J. On United States and North Carolina holidays, there shall be no maximum flag size or number or other limitations on manner of display.
- K. This section shall not be interpreted to restrict the right to display eligible flags as banners or noncommercial signage under Article 11, Sign Standards. Flags mounted directly on a building wall shall expressly be considered signs and shall be subject to Article 11, Sign Standards.

Sec. 7.8 General Performance Standards

7.8.1 Air Pollution

Any activity which releases smoke, particulate matter, gases or contaminants into the atmosphere shall comply with all applicable federal and State regulations.

7.8.2 Fire, Explosion and Storage of Flammable Materials

All activities shall comply with the Fire Codes of the appropriate jurisdiction.

7.8.3 Hazardous Materials and Wastes

All activities shall comply at a minimum with all applicable State and federal regulations as well as the appropriate County Health Department regulations and City and County fire department regulations for hazardous materials and wastes.

7.8.4 Electromagnetic Transmissions

All activities shall control electromagnetic frequencies so that there is no interference in the operation of equipment off-site and no adverse effects to persons off-site.

7.8.5 Waste Products

Any activity which discharges material or liquids into sanitary sewers shall conform with all federal, State and local discharge and release regulations. City and County sanitation ordinances may also apply. All storage areas, waste disposal areas, and trash handling facilities shall be designed to prevent wind blown debris from leaving the site. The drainage of waste or stored materials onto adjacent properties or directly into creeks and watercourses or into the stormwater conveyance system is prohibited. Only uncontaminated stormwater runoff may be discharged into the stormwater conveyance system.

7.8.6 Radiation

All activities shall comply with all federal and State regulations which apply to the handling, storage, and disposal of nuclear material.

7.8.7 Noise

Noise shall be regulated by Article II, Noise, of Chapter 26, Environment, Litter, Vandalism and Pollution the Durham City Code or Article 11 of Chapter 14 (Environment) of the Durham County Code, as appropriate.

Article 8 | Environmental Protection

Sec. 8.1 Purpose

Durham County is endowed with an abundance of natural resources, including land, forests, streams and rivers, lakes, wildlife and natural beauty. Inappropriate development threatens the quality of the natural resources that make it a special place to live and work. Durham's governing bodies recognize that establishing standards for the protection of Durham County's natural resources represents prudent stewardship of the land and good business. The multiple purposes of natural resource protection standards are:

- A. To preserve and enhance the quality of the water in rivers, streams, ponds and lakes that flow into and out of Durham County;
- B. To minimize future flooding problems by restricting development in flood prone areas;
- C. To preserve the water carrying capacity of watercourses and the natural water storage capacity of the floodplain;
- D. To protect land and watercourses from pollutants, sedimentation and erosion;
- E. To retain open spaces in order to protect their environmentally-sensitive character;
- F. To protect and conserve significant natural resources from degradation due to inappropriate development. Such natural resources include Inventory Sites, wildlife and plant life habitats, wetland areas and riparian areas;
- G. To minimize the impact of development by controlling the location, intensity, pattern and design of development and construction activities;
- H. To enhance the aesthetic appearance of Durham as a means of improving quality of life and attracting new businesses and residents;
- I. To improve air quality by reducing the heat island effect by reducing pollution and fossil fuel used for transportation by encouraging walking, bicycling and transit; and
- J. To protect environmentally sensitive lands while recognizing the legitimate expectations of property owners and Durham's economic development goals.

Sec. 8.2 Exemptions from Environmental Protection Standards

8.2.1 Water Supply Reservoirs

Public water supply reservoirs and associated facilities shall be exempt from the requirements of this Article unless explicitly acknowledged within any section.

Sec. 8.3 Tree Protection and Tree Coverage

8.3.1 Tree Coverage Standards

A. Purpose

The primary purpose of the tree coverage standards is the preservation and maintenance of undisturbed tree cover and the provision of replacement tree cover on development sites in the Urban and Suburban Tiers. Tree coverage serves to reduce glare, noise, air pollution, and soil erosion; to moderate temperatures; to reduce stormwater runoff; to preserve remnants of Durham's native ecology; to provide habitat for native plants and wildlife; to provide a healthy living environment; and to make Durham County a more attractive place to live.

B. Applicability

1. Tree coverage standards shall only be applied in the Urban and Suburban Tiers.
2. Developments in the RR and RS-20 Districts, and developments of less than four acres in size in the Urban Tier, shall be exempt from tree coverage requirements if enforceable assurances are provided that no mass grading as defined in Sec. 16.3, Defined Terms, or clear-cutting as defined in paragraph 8.3.4, Clear-Cutting, will be utilized during the development process.
3. No tree coverage is required in non-residential districts in the Urban Tier.
4. Additions to existing residential structures, excluding multiplexes and apartments, are exempt from tree coverage requirements.

C. Tree Coverage

1. New development shall include tree coverage areas on a portion of the development tract.
2. Site plans for additions to development shall provide tree coverage as a percentage of the area proposed for disturbance, unless tree coverage in an amount consistent with the required amounts of this Ordinance was provided on the original site plan for the original development.
3. **Locations**
 - a. Tree coverage areas in new subdivisions shall be located in common open space or buffers required by other provisions of this Ordinance, except that new subdivisions without buffers that make payment in lieu of required open space under paragraph 7.2.2, Required Open Space, can locate tree coverage areas on private lots or as otherwise specified below.
 - b. Any forested land in the floodway, non-encroachment area, floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) (unless proposed to be filled or developed in accordance with paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas), preserved wetlands and wetland buffers, steep slope areas, riparian buffers, Durham Natural Inventory Sites, Major Transportation Corridor (MTC) buffers, and any portion of the tract left undisturbed in order to create required perimeter buffers that satisfies the minimum size requirements established in

paragraph 8.3.1D , Preserved Tree Coverage, or paragraph 8.3.1E, Replacement Tree Coverage, below can be used as tree cover.

4. Tree coverage standards can be met either by preserving existing trees on the site, by planting replacement trees, or a combination of both.

- a. **Suburban Tier**

The percentage of a tract which shall have tree coverage is as indicated in the table below. The total tree coverage area shown reflects the addition of replacement tree coverage area to the preserved tree coverage area shown. For certain calculation exclusions in paragraph 8.3.1C.5, Tree Coverage Calculation Exclusions, the total required tree coverage may be adjusted.

Residential Development	
Preserved Tree Coverage Area (%)	Total Tree Coverage Area Required (%)
20	20
At least 15 but less than 20	23
At least 10 but less than 15	24
Less than 10	25
Nonresidential Development	
Preserved Tree Coverage Area (%)	Total Tree Coverage Area Required (%)
10	10
At least 8 but less than 10	13
At least 6 but less than 8	14
Less than 6	15

- b. **Urban Tier**

Developments in residential districts in the Urban Tier shall provide a minimum 3% tree coverage.

- c. **(County Only) SRP-C District**

A minimum of 3% tree coverage is required, and can be provided anywhere within the contiguous zoning area.

5. **Tree Coverage Calculation Exclusions**

- a. For the purposes of calculating tree coverage requirements, the following shall be excluded from the total area of the development tract:
 - (1) The water surface area of ponds, lakes and other water bodies (excluding stormwater control structures).
 - (2) Right-of-way dedication for the widening of existing road right-of-way.
 - b. For the purposes of calculating tree coverage requirements, the following exclusions can be applied:
 - (1) (City Only) For single-family residential development in the Suburban Tier: The area within a utility easement of record (power, gas, water, or sewer) that measures at least 50 feet in width and exists at the time of application submittal. If an application claims this exclusion, the following shall apply:

- (a) The exclusion shall only be applied to the area calculation for Replacement Tree Coverage and shall allow for adjustment to the overall tree coverage percentage requirement to accommodate the exclusion;

Example: An application requires tree coverage for a 100-acre development tract, with five acres within a qualifying easement. Per the table in paragraph 8.3.1C.4.a, Suburban Tier, 15% is proposed for tree preservation, therefore requiring 8% for tree replacement for a total of 23% tree coverage. The exclusion shall be applied as follows:

- 15% of 100 acres = 15 acres for tree preservation
- 8% of 95 acres (5 acres removed from the 100 acres) = 7.6 acres
- The total tree coverage required = 22.6 acres, or 22.6% (adjusted from the original 23% requirement to accommodate the exclusion)

- (b) No density credit shall be allowed for land within the easement; and
- (c) No pervious surface credit shall be allowed for land within the easement in determining the overall percentage of impervious surface of the development.

- (2) Where evidence can be provided that a portion of a development tract has been in continuous agricultural use since January 1, 1980, the tree coverage standard indicated in paragraph 8.3.1C, Tree Coverage, can be reduced by the proportion of the entire development tract that is in such agricultural use, up to 33%. Such portion of the tract shall not be required to remain in agricultural use upon approval of a site plan by the approving authority. Tree coverage requirement reductions under this paragraph shall not apply to nonresidential development.

Example: A 100 acre site in the Suburban Tier is to be developed as single-family housing. Twenty percent of the site is currently in agricultural use. Therefore, instead of the 20% tree coverage requirement, the overall site is only required to provide 16% tree coverage.

6. Tree preservation and tree replacement areas shall be shown on all preliminary plats, final plats, site plans and development plans in order to clearly assign tree replacement responsibility to future owners. Tree preservation and tree replacement areas on any individual lot shall be clearly shown on all plot plans for the lot.
7. Property owners shall be responsible for protecting and preserving tree preservation and tree replacement areas during and after the development process in accordance with standard horticultural practice and paragraph 8.3.2, Protection of Existing Vegetation.
8. Trees can satisfy both tree coverage requirements, and landscaping and buffering requirements within Article 9, Landscaping and Buffers, as applicable, as long as all applicable standards can be met.

D. Preserved Tree Coverage

Areas proposed as tree preservation shall meet the following requirements to satisfy the tree coverage standards in paragraph 8.3.1, Tree Coverage and Protection Standards:

1. The provisions of paragraph 8.3.2, Protection of Existing Vegetation, shall be fulfilled.
2. Tree preservation areas shall be located in the areas listed in paragraph 8.3.1, Tree Coverage Standards, above. Additional tree preservation areas can be located outside of these areas, in which case they shall be located in order to preserve specimen trees and to preserve clusters of trees.

3. Clusters of Trees

- a. The tree coverage area for a cluster of trees shall be determined by the exterior boundary of the total root protection zones for all of the trees in the cluster.
- b. For parcels greater than one acre, no tree preservation area for a cluster of trees shall be counted toward meeting the tree coverage standard unless it includes a minimum of 1,000 square feet (or such smaller area as required by paragraph 8.3.1C.4 above) and has no individual dimension of less than 13 feet. The area protected shall include the entire root protection zone of the tree cluster, and adequate tree protection measures, as defined in paragraph 8.3.2, Protection of Existing Vegetation, shall be taken during the construction and grading of the project.
- c. For parcels one acre or less, no single tree preservation area for a cluster of trees shall be counted toward meeting the tree coverage standard unless it includes a minimum of 500 square feet (or such smaller area as required by paragraph 8.3.1C.4 above) and has no individual dimension less than 13 feet.
- d. At least 60% of the tree coverage included within any tree preservation area shall be composed of trees with at least a one inch dbh as determined through use of landscape sampling pursuant to paragraph 9.3.3, Sampling.
- e. At least 75% of the root protection zone for a cluster of trees shall be located on the subject site for it to be considered a protected cluster.

4. Individual Trees

- a. The tree coverage area for an individual tree shall be determined by the tree's root protection zone.
- b. At least 75% of the root protection zone for an individual tree shall be located on the subject site in order for that tree to count as preserved.
- c. An individual tree can be counted toward tree coverage credit provided that its diameter is eight inches dbh or greater.

5. Construction in Preserved Tree Coverage Area

- a. Preserved tree coverage areas shall not be used for active recreational purposes, except the following:
 - i. Unpaved walking paths and foot trails constructed with minimal disturbance of tree roots and existing vegetation. No tree eight inches dbh or greater shall be removed for the construction of the trail.

- ii. Paved trails that are public trails and are shown on the most recent version of the Durham Trails and Greenways Master Plan. In no case shall the clearing of the trail corridor exceed 16 feet in width.
 - iii. Amenity areas containing such items as picnic tables and benches provided that such areas are unpaved and no larger than 200 square feet or 10% of the tree coverage area, whichever is smaller. No tree eight inches dbh or greater shall be removed for the construction of an amenity area.
- b. All buildings, utilities, and stormwater facilities shall be set back at least 10 feet from the edge of any preserved tree coverage area. No easements, except conservation, greenway, and landscape easements, shall be included within a tree coverage area.

E. Replacement Tree Coverage

Areas proposed as tree replacement shall meet the following requirements to satisfy the standards found in paragraph 8.3.1C, Tree Coverage:

1. For parcels greater than one acre, no tree replacement area shall be counted toward meeting the tree coverage standard unless it includes a minimum of 1,000 square feet (or such smaller area as required by paragraph 8.3.1C.4 above) and has no individual dimension of less than 25 feet.
2. For parcels one acre or less, no tree replacement area shall be counted toward meeting the tree coverage standard unless it includes a minimum of 500 square feet (or such smaller area as required by paragraph 8.3.1C.4 above) and has no individual dimension less than 15 feet.
3. When replacement trees are provided in order to satisfy the requirements of paragraph 8.3.1C, Tree Coverage, coverage credit shall be accrued in accordance with the following table with credit calculated based on the required planting area for the proposed trees.

Hardwood Caliper (inches)	Non-Hardwood Height (feet)	Credit (square feet)
4	18 or over	275
3½	16 to 18	250
3	14 to 16	225
2½	12 to 14	200
2	10 to 12	175
1½	8 to 10	150
1	7 to 8	100
0.75	5 to 7	75
Less than 0.75	Less than 5	No credit

EXAMPLE: Ten trees at 2½-inch caliper require 2,000 square feet of planting area (10 X 200 = 2,000), and provide 2,000 square feet of replacement tree credits.

4. At least 50% of replacement trees shall be one inch caliper or greater.
5. A minimum of 50% of replacement trees shall be hardwood canopy species native to Durham County. The remainder of the replacement trees shall be a mix of canopy and

understory hardwood and non-hardwood species, as long as no more than 50% of this remainder is pines.

6. Replacement trees shall be provided as a mix of species, in accordance with the standards set in paragraph 9.2.3B.6, Mixing of Tree Species, and shall consist of species allowed for "Tree Coverage" in tables 1A through 1H within the *Landscape Manual for Durham, North Carolina*.
7. At least 75% of the replacement trees planted to augment preserved tree coverage clusters pursuant to paragraph 8.3.1D.3.f shall be native understory hardwoods of one inch caliper or greater.
8. Areas designated as replacement tree coverage shall be subject to the use limitations imposed on preserved tree coverage in paragraph 8.3.1D.5, Construction in Preserved Tree Coverage Areas, except that stormwater control measures designed as bioretention facilities shall be allowed.
9. Replacement trees shall be planted before any Certificate of Compliance is issued, unless the planting has been deferred to an appropriate season in accordance with the requirements of paragraph 9.11.2, Extensions for All Other Development.

8.3.2 Protection of Existing Vegetation

Any trees preserved on a development tract in order to meet Ordinance requirements or otherwise indicated to be preserved shall meet the following protection standards.

- A. Protection measures to be used during grading and construction, including details of the tree protection fence(s) and its location(s), shall be shown on the site, landscape, grading, utility, demolition, and erosion control plans.
- B. Root protection zones shall be established around all trees to be preserved. The root protection zone shall either be a six-foot radius around the tree or a one foot radius for every inch of tree dbh, whichever is greater.
- C. A tree protection fence constructed of a material resistant to degradation by sun, wind, and moisture for the duration of the construction, shall be installed at the same time as the erosion control measures, and shall remain in place until all construction is complete. Such fencing shall be mounted on metal posts placed no further than ten feet apart. Silt fencing shall not serve as tree protection fencing.
- D. At the start of grading involving the lowering of the existing grade around a tree or stripping of topsoil, a clean, sharp, vertical cut shall be made at the edge of the tree save area at the same time as other erosion control measures are installed. Tree protection fencing shall be installed on the side of this cut farthest away from the tree trunk. This procedure shall be incorporated as a note on the grading and erosion control plans.
- E. No storage of materials, dumping of waste materials, fill, or parking of equipment shall be allowed within the root protection zone, and no trespassing shall be allowed within the boundary of the root protection zone, and shall be so noted on the grading and erosion control plans and posted at each end of the tree protection fence with perimeter signs spaced a maximum of 100 feet on center thereafter. Each sign shall read "no trespassing/tree protection area" and "prohibido entrar/zona protectora para los arboles".

8.3.3 Tree Survey

A. Purpose

The primary purpose of the tree survey requirements is to provide better information about the presence and location of significant trees on sites proposed for development. This information is needed before plans for development are so far advanced that it is unreasonable and impractical to modify the plans to protect the trees identified on the tree survey. Knowing the location and size of specimen trees helps the staff and governing body evaluate possible modifications to the proposed plans to preserve significant trees and improve the appearance of proposed development.

B. Land Disturbance Tree Survey

1. A land disturbance tree survey shall be required for any area for which the limits of disturbance are within 30 feet of a preserved tree coverage area, floodplain, steep slope area, stream buffer, required landscape buffer, Inventory Site, wetland, or conservation area.
2. The land disturbance tree survey shall show the specific location, species, size and root protection zone of any tree(s) eight inches dbh or greater that is within 30 feet of any area proposed for disturbance, and meets the qualifications in the above paragraph.
3. The land disturbance tree survey shall be shown on all site, grading, and erosion control plans, as well as preliminary plats.

8.3.4 Clear-Cutting

A. Standard

Properties shall not be clear-cut during the conduct of forestry activities. To maintain the visual character of the site from adjoining properties and right-of-way, a vegetated perimeter buffer shall be maintained while tree harvesting for forestry occurs. A 32-foot wide buffer of naturally existing vegetation shall be maintained along all boundaries of the property being forested that adjoin other properties. Along public rights-of-way, a 50-foot buffer of naturally existing vegetation shall be maintained, exclusive of areas required for access to the site.

B. Penalties

1. City

Site plans proposing development of properties on which all or substantially all of the trees protected in a 32-foot buffer required under this section, a 50-foot buffer required under this section, or both, are removed shall be denied for a period of three years from the date of removal or five years from the date of removal if removal is a willful violation of this section.

2. County

Site plans proposing development of properties on which all or substantially all of the trees protected in a 32-foot buffer required under this section, a 50-foot buffer required under this section, or both, are removed shall be denied for a period of three years from the date of removal.

8.3.5 Specimen Trees

- A. A specimen tree shall be defined as any evergreen canopy tree eighteen (18) inches dbh or greater, any deciduous canopy tree twelve (12) inches dbh or greater and any understory tree (deciduous or evergreen) eight (8) inches dbh or greater, except any tree listed as a non-native invasive plant by the US Forest Service or prohibited in the *Landscape Manual for Durham, North Carolina* pursuant to paragraph 9.2.1, Landscape Manual.
- B. Specimen trees, as defined above, that are saved and protected under the requirements of paragraph 8.3.2, shall be granted tree coverage credit at one and one-half times the size of the root protection zone. Specimen trees that are located in the floodway, non-encroachment area, floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) (unless proposed to be filled or developed in accordance with paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas), preserved wetlands and wetland buffers, steep slope areas, riparian buffers, Major Transportation Corridor (MTC) buffers, and Durham Natural Inventory Sites are not eligible for additional credit as described above.
- C. In order to receive additional credit for specimen trees as described above, a specimen tree survey shall be required showing specific location, species, size, and root protection zone of all specimen trees to be saved. This survey shall be included on all site, landscape, grading, utility, demolition, and erosion control plans.

Sec. 8.4 Floodplain and Flood Damage Protection Standards

8.4.1 Purpose

The primary purpose of the floodplain and flood damage protection standards is to preserve and maintain the natural floodplain in an undisturbed vegetated state in order to maintain flood storage capacity, control stormwater, improve water quality and conserve plant and wildlife habitat. Additionally, these standards serve to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas.

In addition, this section serves to facilitate implementation of the Federal Flood Insurance Program and to minimize the possibility that new construction will sustain damage from flooding by:

- A. Restricting or prohibiting uses that are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- D. Controlling filling, grading, dredging, or other development that may increase erosion or flood damage;
- E. Preventing or regulating the construction of flood barriers that unnaturally divert flood waters or that may increase flood hazards to other lands;
- F. Minimizing damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, and streets and bridges located in areas of special flood hazard; and
- G. Ensuring that property owners and potential property owners are notified that property is a Special Flood Hazard Area or Future Conditions Flood Hazard Area.

Commentary: Losses in floodprone areas are the result of the cumulative effects of obstructions, removal of vegetative cover, and construction practices that cause an increase in flood heights and velocities. Increased flood heights and velocities create a greater threat to land uses and structures that are inadequately elevated, floodproofed, or are otherwise unprotected from flood damage. Occupancy in flood prone areas by uses vulnerable to floods or other hazards can result in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas and Future Conditions Flood Hazard Areas or uses permitted within such areas will be free from flooding

or flood damages. This ordinance shall not create liability on the part of Durham City or County or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

8.4.2 Applicability

This section shall apply to all Special Flood Hazard Areas and Future Conditions Flood Hazard Areas within the City and County of Durham as identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying flood maps, such as the Flood Insurance Rate Map(s) (FIRM) for Durham County dated May 2, 2006; February 2, 2007; April 16, 2007; June 4, 2007; August 2, 2007; or May 16, 2008, are adopted by reference and declared to be a part of this ordinance. Also adopted by reference and declared to be a part of this ordinance are associated Physical Map Revisions and Letters of Map Change issued by FEMA as of [date on which ordinance has been adopted by both governing bodies]. The Special Flood Hazard Areas and Future Conditions Flood Hazard Areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to, detailed flood data:

- A. generated as a requirement of paragraph 3.21.2B (11 & 12), Duties and Responsibilities;
- B. preliminary FIRMs where more stringent than the effective FIRM; or
- C. post-disaster Flood Recovery Maps.

8.4.3 Standards

A. General

In all Special Flood Hazard Areas and Future Conditions Flood Hazard Areas the following provisions are required:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
2. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
3. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages;
4. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric meter panels/boxes, utility/cable boxes, appliances (i.e., washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches;
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
8. Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of this ordinance, shall meet the requirements of new construction; and
9. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility can be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to the certification requirements in Sec. 3.21, Floodplain Development Permit.
10. Fill material shall be used for all new construction and substantial improvements to create an elevation that is two feet above base flood elevation or future conditions flood elevation, except as otherwise authorized pursuant to paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The fill material shall be required to extend for a distance of 40 feet from the exterior walls of a building. Where the distance to the property line is less than 40 feet, the fill shall extend to the property line. The required fill material distance shall include a sloped edge with a maximum 3:1 slope [for example, for a fill three feet deep: 31 feet of flat fill plus nine feet of sloped fill] or a retaining wall in lieu of the slope [for example, a side yard of flat fill and a retaining wall]. Residential accessory structures which are defined as nonhabitable structures by the North Carolina Building Code are exempt from requirements to extend the fill material away from the base but are required to be placed on fill which is two feet, or five feet in Zone A, above base flood elevation. Exceptions from any of these requirements resulting from special storm water considerations shall be forwarded to the approving authority if other than the Floodplain Administrator, with a recommendation from the Floodplain Administrator.
11. Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway or non-encroachment area, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway or non-encroachment area, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
12. When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
13. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

B. Specific Standards

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided and in Future Conditions Flood Hazard Areas where future conditions flood elevations data has been provided, as set forth in paragraph 8.4.2, Applicability, or paragraph 3.21.1B (11 & 12), Duties and Responsibilities, the following provisions are required:

1. Subdivisions

- a.** Land in the Special Flood Hazard Areas and Future Conditions Flood Hazard Areas can be used for the following purposes, provided that such uses are designed and constructed to minimize clearing, grading, erosion and water quality degradation and are in compliance with the Sec. 8.4, Floodplain and Flood Damage Protection Standards. Land within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas shall not serve to meet minimum lot size requirements, except in the Rural Tier and on property zoned RR or RS-20 in the Suburban Tier where at least 50% of the required lot area is located outside the floodway or non-encroachment area or floodway fringe.
- b.** When permitted, development proposals located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas shall:
 - (1) be consistent with the need to minimize flood damage;
 - (2) have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
 - (3) have adequate drainage provided to reduce exposure to flood hazards; and,
 - (4) have Base Flood Elevation (BFE) data provided if development is greater than the lesser of five (5) acres or fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per paragraph 8.4.2, Applicability, to be utilized in implementing this code.

2. Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation.

3. Non-Residential Construction

New construction or substantial improvement of any commercial, industrial (other than hazardous, solid waste, salvage yards, chemical storage facilities or similar uses which are prohibited) or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation. Structures located in AE and X (Future) Zones can be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in the certification requirements in Sec. 3.21, Floodplain Development Permit.

4. Manufactured Homes

- a. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation.
- b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to NCGS §143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- c. All foundation enclosures or skirting shall be in accordance with paragraph 8.4.3B.5, Elevated Buildings.
- d. All new, substantially improved or substantially damaged manufactured home parks or subdivisions located within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas shall prepare an evacuation plan for evacuation of all residents. The plan shall be filed with the Inspections Director, or designee (as the Floodplain Administrator) and the Emergency Management Coordinator prior to the time of site plan approval, plat approval, or building permit, if site plans or plats are not required.
- e. Manufactured homes, except replacement manufactured homes located in an existing manufactured home park or subdivision, shall not be permitted in the floodway or non-encroachment area. Permitted manufactured homes shall be subject to the non-encroachment standards of paragraph 8.4.3E, Floodway and Non-Encroachment Areas.

5. Elevated Buildings

New construction or substantial improvements of elevated buildings that include fully enclosed areas that are below the regulatory flood protection elevation shall not be designed to be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises, be constructed entirely of flood resistant materials below the regulatory flood protection level in Zone AE and X Zone (Future) and meet the following design criteria:

- a. Measures for complying with this requirement shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. To meet this requirement, the foundation must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - (1) Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

- (2) The total net area of all openings must be at least one (1) square inch for each square foot of each enclosed area subject to flooding.
 - (3) If a building has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter;
 - (4) The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade; and
 - (5) Openings can be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions. For purposes of this provision, vinyl or sheet metal skirting shall not be considered an enclosure for regulatory and flood insurance rating purposes and therefore shall not require hydrostatic openings.
- b.** Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

6. Additions/Improvements

- a.** Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
- (1) not a substantial improvement the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure; or
 - (2) a substantial improvement, the existing structure and the addition and/or improvements must comply with the standards for new construction.
- b.** Additions to post-FIRM structures with no modifications to the existing structure shall require only the addition to comply with the standards for new construction.
- c.** Additions and/or improvements to post-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure are:
- (1) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction; or
 - (2) a substantial improvement, the existing structure and the addition and/or improvements must comply with the standards for new construction.
- d.** Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

7. Recreational Vehicles

Recreational vehicles shall not be located within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas for 180 days or more and shall be licensed and ready for highway use (on wheels attached to a site by quick-disconnect type utilities with no permanently attached additions). Recreational vehicles not meeting these standards shall meet the standards of manufactured homes above.

8. Temporary Structures

Prior to the issuance of a floodplain development permit for a temporary structure, Applicants must submit to the Floodplain Administrator a written plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information:

- a. a proposed time period for which the temporary use will be permitted;
- b. the name, address, and phone number of the individual responsible for the removal of the temporary structure;
- c. the time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- d. a copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and
- e. designation, accompanied by documentation, of a location outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area to which the temporary structure will be moved.

9. Accessory Structures

When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area or Future Conditions Flood Hazard Area, the following criteria shall be met:

- a. Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas);
- b. Accessory structures shall be designed to have low flood damage potential;
- c. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- d. Accessory structures shall be firmly anchored in accordance with paragraph 8.4.3, General;
- e. All service facilities such as electrical and heating equipment shall be installed in accordance with paragraph 8.4.3, Specific Standards;
- f. Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with elevated building requirements in paragraph 8.4.3, Standards; and
- g. An accessory structure with a footprint less than 150 square feet does not require an elevation or floodproofing certificate. Elevation or floodproofing

certifications are required for all other accessory structures in accordance with the certification requirements in Sec. 3.21, Floodplain Development Permit.

C. Floodplains without Base Flood Elevations

Within the Special Flood Hazard Areas established in paragraph 8.4.2, Applicability, where no Base Flood Elevation (BFE) data has been provided, the following provisions shall apply:

1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:
 - a. If Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in paragraph 3.21.2B (11&12).
 - b. All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per paragraph 8.4.2, Standards, to be utilized in implementing this ordinance. A Letter of Map Revision (LOMR) shall be required prior to the approval of construction drawings for development requiring BFE data to be provided.
 - c. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated to or above five feet above the highest adjacent grade.

D. Floodplains with Base Flood Elevations but no Established Floodway or Non-Encroachment Areas

Along rivers and streams where Base Flood Elevation (BFE) data is provided but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

E. Floodway and Non-Encroachment Areas

Located within the Special Flood Hazard Areas established in paragraph 8.4.2, Applicability, are areas designated as floodways or non-encroachment areas, which are extremely hazardous due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. In such areas no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless the Federal Emergency Management Agency (FEMA) authorizes conditional approval of the proposed

encroachment via a Conditional Letter of Map Revision (CLOMR) or a professional engineer registered in the State of North Carolina certifies that such uses will result in no increases in flood levels during the occurrence of a base flood, as demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice if required by the Floodplain Administrator.

F. Standards for Areas of Shallow Flooding (Zone AO)

Located within the Special Flood Hazard Areas established in paragraph 8.4.2, Applicability, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to the general standards in 8.4.3A, all new construction and substantial improvements shall meet the following requirements.

1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of 2 feet, above the highest adjacent grade; or at least five feet above the highest adjacent grade if no depth number is specified.
2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in paragraph 8.4.3F.1 so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as per paragraph 3.21.6, Certification Requirements, and paragraph 8.4.3B.3, Non-Residential Construction.
3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

8.4.4 Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas

A. General

1. Development and land disturbing activity within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas shall be prohibited, except as provided below.
2. The Floodplain Administrator and the Board of Adjustment, as applicable, shall not approve development that is located below the regulatory flood protection elevation if such development is otherwise required to be located at or above the regulatory flood protection elevation or is not permitted within the Special Flood Hazard Areas or Future Conditions Flood Hazard Areas.
3. Development addressed under paragraph 8.4.3C, Floodplains without Base Flood Elevations, and paragraph 8.4.3D, Floodplains with Base Flood Elevations but no Established Floodway or Non-Encroachment Areas, shall be deemed floodway development for purposes of this section.

B. Development Allowed

Land can be used for the following purposes, with no special approvals required:

1. Agricultural uses, including active agriculture, pasture forestry, wildlife sanctuary, game farms, and similar uses; and
2. Lawns and gardens.

C. Development Requiring Floodplain Administrator Approval

The following shall only require Floodplain Administrator approval in association with any applicable site plan, plat, construction drawings, or building permit approval.

1. Development of, or substantial improvements to, a single-family or duplex structure, and associated site improvements such as accessory structures, driveways, walkways, and utility crossings, on a single lot of record recorded on or before January 1, 2006, or recorded prior to being mapped in the floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO). Such projects can utilize fill, pursuant to a floodplain development permit per Sec. 3.21, Floodplain Development Permit, in the floodway fringe, non-encroachment area fringe, or Zone AO.
2. Floodproofing or elevation by design in lieu of required fill for new construction or substantial improvements on lots of record that were recorded on or before January 1, 2006, pursuant to a floodplain development permit issued under Sec. 3.21, Floodplain Development Permit. If the Floodplain Administrator approves floodproofed or elevated-by-design construction or improvements rather than use of fill in Zone AE or Zone X (Future), the approval shall specify the minimum foundation opening requirements and limitations on below-BFE enclosures uses, if applicable.
3. Development with a valid site plan or preliminary plat approval prior to the most recent and applicable Flood Insurance Rate Map(s) (FIRM) for Durham County. This shall also include any necessary site plan or preliminary plat amendment that is a result of the impacts of the FIRM.
4. The following uses, with the ability to utilize fill in support of the use:
 - a. Parks, playgrounds, trails, ballfields, and other similar recreational facilities.
 - b. Constructed or restored wetlands or riparian buffers for mitigation.
 - c. Utility crossings to connect to existing facilities where it is the most direct connection, as specified by the Public Works Director, or designee. Crossings shall be perpendicular from the facility to the connection, with an allowable 15 degree variation. A non-perpendicular route shall be used if it is demonstrated to cause less disturbance than the perpendicular route.
 - d. Crossings by streets, driveways, pedestrian walkways, and railroads where no other option is available. Crossings shall be perpendicular from the facility to the connection, with an allowable 15 degree variation. A non-perpendicular route shall be used if it is demonstrated to cause less disturbance than the perpendicular route.
 - e. Level spreaders and vegetative filter strip stormwater runoff devices.

D. Development Requiring a Minor Special Use Permit

The following shall require approval of a minor special use permit pursuant to Sec. 3.9, Special Use Permits, including the review factors in paragraph 3.9.8C, Additional Review

Factors for Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas.

1. Fill or Development in the Floodway Fringe or Non-Encroachment Area Fringe

Any fill or development (e.g., parking or floodproofing or elevation by design) in the floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) that is not under the approval authority of the Floodplain Administrator pursuant to paragraph 8.4.4B, Development Requiring Floodplain Administrator Approval.

2. Fill or Development in the Floodway or Non-Encroachment Area

- a. Uses listed below and located in the floodway or non-encroachment area that do not qualify for Floodplain Administrator approval pursuant to paragraph 8.4.4C, Development Requiring Floodplain Administrator Approval:

- (1) Crossings by streets, driveways, pedestrian walkways, and railroads.
- (2) Intakes, docks, piers, utilities (including water and wastewater treatment, including stormwater control and sedimentation and erosion control facilities), bridges, other public facilities, and water-dependent structures.
- (3) Other encroachments authorized by FEMA.

- b. Fill may be proposed in support of such uses.

- c. Certification required under paragraph 8.4.3C, Floodplains without Base Flood Elevations, paragraph 8.4.3D, Floodplains with Base Flood Elevations but no Established Floodway or Non-Encroachment Areas, or paragraph 8.4.3E, Floodway and Non-Encroachment Areas, as appropriate, shall be provided.

- E. No density credit shall be allowed for land in the floodway or non-encroachment area, except in the RR District where 100% density credit shall be given for land in the floodway or non-encroachment area in Conservation Subdivisions pursuant to paragraph 6.2.4, Conservation Subdivision.
- F. The amount of land in the floodway fringe or non-encroachment area fringe shall be credited for residential density on adjacent land in the same development at a rate of 50% of that allowed by the zoning, except in the RR District where 100% density credit shall be given for land in the floodway fringe or non-encroachment area fringe in Conservation Subdivisions pursuant to paragraph 6.2.4, Conservation Subdivision.

Sec. 8.5 Riparian Buffer Protection Standards

8.5.1 Purpose

The primary purpose of Sec. 8.5, Riparian Buffer Protection Standards (which may be referred to herein as “this section”) is to maintain land adjacent to surface waters in a vegetated state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, reduce sedimentation and erosion, provide nutrient removal, conserve plant and wildlife habitat and protect wildlife movement corridors.

8.5.2 Applicability

This section shall apply to any person or entity conducting activities within the City or County of Durham, except where such activities are otherwise regulated by the State of North Carolina or the United States. Outside of the Neuse River Basin, activities otherwise regulated by the State include forest harvesting and agricultural activities, activities conducted by a local, state, or federal government, and activities under multiple jurisdictions except where such multiple jurisdictions are the City and County of Durham exclusively. This section shall supersede all locally implemented buffer requirements stated in 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Jordan watershed. Where any requirement of this section conflicts with any other valid law, the most stringent requirement shall apply.

The requirements of this section shall apply in all cases, including where State standards are less stringent. Review and approval by the City or County is always required, except in the case of an exempt use, and shall occur pursuant to the applicable process in each case (e.g., Preliminary Plat, Major Site Plan, etc.). Within the Neuse River Basin, final review by the City or County shall occur after any State action is completed.

8.5.3 Definitions

Within the Neuse River Basin, the definitions contained or referenced in 15A NCAC 02B .0233 and .0242 shall apply to this section. Outside of the Neuse River Basin, the definitions contained or referenced in 15A NCAC 02B .0263, .0267, and .0268 shall apply to this section. Such definitions shall supersede any conflicting UDO definition for purposes of this section.

8.5.4 Riparian Buffers Protected

A. Regulated Activities

This section shall apply to any activity conducted within any riparian buffer, and to any activity conducted outside of any riparian buffer that has hydrologic impacts upon that buffer in violation of the diffuse flow requirements of paragraph 8.5.5, Diffuse Flow Requirements. There is no disturbed area minimum for regulated activities and they include but are not limited to activities conducted pursuant to building permits. As stated in paragraph 8.5.2, Applicability, compliance with this entire section is required even where State standards are less stringent. Within the Neuse River Basin, final review by the City or County shall occur after any State action is completed.

B. Buffers Protected

1. General Riparian Buffers

Riparian buffers as depicted on the table below shall be required adjacent to the following surface waters: intermittent streams; perennial streams; modified natural streams; lakes; and ponds including beaver ponds. The table includes the additional buffer width required for certain surface waters in watershed protection overlays. It does not include the 10-foot setback required under paragraph 8.5.10C below. A lake or pond shall receive the same buffer as the stream to which it is connected at the point of initial connection. A gap of 300 feet or less in a stream, as determined by the City or County, shall receive the same buffer as the upstream portion of such stream.

Commentary: UDO Sec. 16.3, Defined Terms, defines “adjacent” as “[p]roperty abutting directly on the boundary of, touching, or sharing a common point.” The applicable state rules define “modified natural stream” as “an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the conveyance of water.”

Key:

P - Perennial

I - Intermittent

NA - Not applicable because not located therein

M/LR-A - Lake Michie/Little River Critical Area

M/LR-B - Lake Michie/Little River Protected Area

E-A - Eno River Critical Area

E-B - Eno River Protected Area

F/J-A - Falls/Jordan Critical Area

F/J-B - Falls/Jordan Protected Area

Tier	Watershed Protection Overlay													
	None		M/LR-A		M/LR-B		E-A		E-B		F/J-A		F/J-B	
Downtown and Compact Neighborhood														
Stream Type	P	I	P	I	P	I	P	I	P	I	P	I	P	I
Width	50	50	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Urban														
Stream Type	P	I	P	I	P	I	P	I	P	I	P	I	P	I
Width	50	50	NA	NA	NA	NA	NA	NA	100	50 ¹	NA	NA	100	50 ¹
Suburban														
Stream Type	P	I	P	I	P	I	P	I	P	I	P	I	P	I
Width	50	50	150	50	150	50	150	50	100	50 ¹	150	100	100	50 ¹
Rural														
Stream Type	P	I	P	I	P	I	P	I	P	I	P	I	P	I
Width	50	50	150	50	150	50	NA	NA	100	50 ¹	150	100	100	50 ¹
¹ Stream buffer minimum of 100 feet if a high density option is utilized per paragraph 8.7.2B.1														

2. Riparian Reservoir Buffers

Riparian buffers shall be required adjacent to reservoirs pursuant to Sec. 8.6, Water Supply Reservoir Buffer.

3. Riparian Wetland Buffers

Riparian buffers shall be required adjacent to wetlands pursuant to Sec. 8.9, Wetlands Protection Standards.

4. Wetlands adjacent to, or within 50 feet of, surface waters shall be considered part of the riparian buffers but are regulated pursuant to 15A NCAC 2B .0230 and .0231, 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.

C. Buffer Measurement

Riparian buffers shall be measured as follows:

1. For intermittent and perennial streams, begin at the top of the bank and extend landward the required distance on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank;
2. For ponds, lakes and reservoirs located within a natural drainage way, begin at the normal water level and extend landward the required distance, measured horizontally on a line perpendicular to a vertical line marking the normal water level;
3. Where an intermittent or perennial stream begins or ends, including but not limited to when it goes underground, enters or exits a culvert, or enters or exits a wetland, begin at the top of the bank and extend landward the required distance in a radius around the beginning or end; and

Commentary: The radius requirement does not apply to a continuous stream that flows through a culvert within an existing stream buffer.

4. Where an intermittent, perennial, or modified natural stream contains a gap of 300 feet or less, as determined by the City or County, extend the upstream buffer in a straight line through the gap, or in an alternative manner if approved by the Planning Director or designee, until it meets the downstream buffer.

D. Buffer Identification

1. Riparian buffers shall be clearly indicated on all development plans, site plans, preliminary plats, final plats, sedimentation and erosion control plans, any other plans required before, during, or after construction, and any other documents as required under applicable law or policy.
2. Signs or other mechanisms that clearly demarcate riparian buffer boundaries shall be required for all new development or redevelopment.
 - a. Temporary signs shall be installed before clearing and grading begins and maintained until permanent signs are installed. Tree save or silt fencing may be used in lieu of temporary signs with prior approval from the City or County as appropriate.
 - b. Permanent signs shall be installed prior to issuance of certificate of occupancy and maintained in perpetuity.
 - c. All signs shall be posted at intervals of one per parcel or every 50 feet, whichever is less.

- d. Each sign shall be [at least, *City only*] 4" by 6" in size, shall face away from the buffer, and shall read "Riparian Buffer – Do Not Disturb Except as Authorized by the City [County] of Durham".
- e. All signs must be placed on metal or wood posts installed securely in the ground, except that permanent signs may be placed on permanent fencing along the buffer boundary. If wood posts are used they must be at least 2" x 2" in size and be made of treated wood. Posts must extend a minimum of three feet above ground and be sunk at least two feet below ground.

8.5.5 Diffuse Flow Requirements

Diffuse flow shall be maintained in riparian buffers by dispersing concentrated flow prior to its entry into a buffer and reestablishing vegetation as listed below. These requirements apply to all development, including development that does not propose to impact or conduct an activity within a riparian buffer.

- A. Concentrated runoff from new ditches or man-made conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters a riparian buffer except as authorized under paragraph 8.5.10, Uses.
- B. Corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of erosion gullies.
- C. New stormwater conveyances including drainage ditches, roadside ditches, and stormwater BMPs shall not be allowed in or through riparian buffers except as authorized under paragraph 8.5.10, Uses.

8.5.6 Maps and On-Site Determinations

A. Maps

All of the following maps shall be used to identify surface water subject to the requirements of this section:

1. The most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, which means the most recent hard copy paper bound map or CD-ROM or PDF of such map; and
2. The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic map prepared by the United States Geologic Survey (USGS); and
3. Outside of the Neuse River Basin, any map approved by the Geographic Information Coordinating Council, the North Carolina Environmental Management Commission and both governing bodies as more accurate than the maps listed in paragraphs 1 and 2 above. However, such map shall not be used for buffer delineation on projects that are existing and ongoing under paragraph 8.5.7, Existing Use Exemption.

Surface water shall be deemed present if it is at least approximately shown on any map. If any surface water is depicted differently on different maps, the most restrictive depiction shall apply.

B. On-Site Determinations

1. Within the Neuse River Basin

A landowner or other affected party who believes that surface water is inaccurately depicted shall consult the North Carolina Division of Water Resources (Division) and may request an on-site determination by the Division.

2. Outside the Neuse River Basin

- a. The Division or another party may request an on-site determination by the City or County as appropriate of the specific origination point of a stream where it is in question.
- b. A landowner or other affected party, including the Division, who believes that one or more maps inaccurately depict, or omit based on site-specific evidence, surface water shall consult the City or County as appropriate and may request an on-site determination by the City or County.
- c. When an on-site determination is requested, a City or County representative, or other party authorized or accepted by the City or County, who has successfully completed the Division's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall make the on-site determination following submission of any fees, information or documents required by the City or County. An origination point shall be established using the latest version of the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*.
- d. A City or County representative, or other party authorized or accepted by the City or County, who has successfully completed the training required above may also make either type of on-site determination absent an outside consultation or request.
- e. An on-site determination shall be valid for five years from the date of the determination unless specified otherwise therein.

3. Surface water shown on a map shall be exempt from Sec. 8.5, Riparian Buffer Protection Standards, if it is determined on site to be: 1) a manmade pond or lake located outside of a natural drainage way, meaning the pond or lake is not fed by, and has no direct discharge to, an intermittent or perennial stream; 2) an ephemeral stream; 3) not present on the ground, except for any stream gap of 300 feet or less; or 4) a ditch or other manmade conveyance other than a modified natural stream unless constructed for navigation or boat access.
4. Surface water not shown on a map shall be governed by Sec. 8.5, Riparian Buffer Protection Standards, if it is determined on site to be: 1) a pond or lake located in a natural drainage way, meaning the pond or lake is fed by and has a direct discharge to an intermittent or perennial stream; 2) a perennial stream, including any gap of 300 feet or less; 3) an intermittent stream, including any gap of 300 feet or less; or 4) a modified natural stream, including any gap of 300 feet or less.
5. Despite the provisions of Section 2.4, Board of Adjustment, any dispute shall be referred to the Division Director c/o the 401 Oversight Express Permitting Unit, or its successor, in

writing. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

8.5.7 Existing Use Exemption

A. General

This section shall not apply to the portion of a riparian buffer occupied by the footprint of a legal existing and ongoing use. An existing and ongoing use is a use that was present within the riparian buffer as of July 22, 1997 within the Neuse River Basin, or as the effective date of this section outside of the Neuse River Basin, and has continued to exist since that time. Such uses may include but are not limited to agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. A use that converts from an existing and ongoing use to another use shall no longer be exempt. Conversion includes but is not limited to changing an agricultural operation to non-agricultural use, failing to maintain a lawn, or failing to meet the criteria specified below for activities allowed.

B. Exemption Maintained

The following activities do not convert an existing and ongoing use to another use:

1. Activities necessary to maintain a use provided that no impervious surface is added to the riparian buffer where it did not exist as of the applicable date, existing diffuse flow is maintained, and either 1) outside of the Neuse River Basin, the site remains similarly vegetated, or 2) within the Neuse River Basin, no additional vegetation is removed except that grazed or trampled by livestock;
2. Grading and revegetating of the outer 20 feet of a buffer that is not located in a watershed protection overlay, provided that the health of the vegetation in the inner 30 feet of the buffer is not compromised, the ground is stabilized and existing diffuse flow is maintained; or
3. Outside of the Neuse River Basin, change of ownership through purchase or inheritance.

C. Outside the Neuse River Basin

Outside of the Neuse River Basin, a project that meets at least one of the following criteria is also existing and ongoing:

1. The project requires a 401 Certification and 404 Permit and they were issued prior to the effective date of this section;
2. The project requires a state permit (e.g., landfill, National Pollutant Discharge Elimination System (NPDES) wastewater discharge, land application of residuals, road construction activity), has started construction or is under contract to start construction, and received all required state permits and certifications prior to the effective date of this section;
3. The project is reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or its immediate successor and reached agreement with the NC Department of Environmental Quality on avoidance and minimization prior to the effective date of this section; or
4. The project can avoid review under the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or its immediate successor due to a Finding

of No Significant Impact and received written approval from the City or County as appropriate prior to the effective date of this section.

D. Development of Existing Single-Family Lots within the Neuse River Basin under Certain Conditions

1. Applicability

Where application of the Neuse River Basin riparian buffer requirements would preclude construction of a single-family residence and necessary infrastructure, such as an on-site wastewater system, the single-family residence may encroach into the buffer if all of the following criteria are met.

- a. The lot was platted and recorded prior to August 1, 2000.
- b. The lot area is two acres or less.
- c. The lot is adjacent to the buffered surface waters.
- d. The lot is not within a watershed protection overlay, or the lot is within a watershed protection overlay but was recorded prior to the effective date of the applicable watershed protection overlay.

2. If documentation demonstrates the lot meets all of the above criteria, then a single-family residence can encroach into the buffer with the following conditions:

- a. The residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot and designed to minimize encroachment into the riparian buffer;
- b. The residence is set back a minimum of 30 feet landward of the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable;
- c. Stormwater generated by new impervious surface within the riparian buffer is treated, and diffuse flow of stormwater is maintained through the buffer; and
- d. If the residence will be served by an on-site wastewater system, no part of the septic tank or drain field shall encroach into the riparian buffer.

3. Prior to the issuance of a building permit, a buffer authorization is required for any encroachments into the riparian buffer.

8.5.8 Piping Streams

Piping of streams is prohibited except where necessary to accomplish a use that is authorized under paragraph 8.5.10, Uses, and approved as required.

Commentary: Approved piping is a use within an existing buffer and the buffer remains in effect. There is no gap in the buffer, so buffer requirements apply along the piped portion of the stream.

8.5.9 Uses

- A. As stated in paragraph 8.5.2, Applicability, compliance with this entire section is required even where State standards are less stringent. Within the Neuse River Basin, final review by the City or County shall occur after any State action is completed.
- B. No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this section. Parties subject to this section shall abide by all state rules and laws regarding waters of the state including but not limited to 15A NCAC 2B .0230 and .0231, 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.
- C. Buildings and other features that require grading and construction shall be set back at least ten feet from the edge of the riparian buffer. When an encroachment into a riparian buffer is permitted either by right, through required authorization, or from approval of a variance, grading and construction necessary for that encroachment shall be allowed within the set back.
- D. Any use authorized by this section shall be designed, constructed and maintained to minimize the amount of intrusion into the riparian buffer and to minimize clearing, grading, erosion, water quality degradation, and damage to vegetation.
- E. Where any use involves temporary land clearing, revegetation shall occur pursuant to an approved vegetation plan. Such plan shall include trees as specified under paragraph 9.2.3B.6, Mixing of Tree Species, and the Durham *Landscape Manual*, planted at a density sufficient to provide 320 trees per acre at maturity with at least 50% of those trees having the potential of attaining a two and a half inch or greater dbh within seven years.
- F. **Use Category Requirements**
 - 1. **Exempt**

An exempt use may occur without authorization provided it adheres to the limitations contained in the Table of Uses below. In addition, an exempt use shall be designed, constructed, maintained and monitored to minimize soil disturbance and maximize water quality protection.
 - 2. **Allowable**

An allowable use requires written authorization from the North Carolina Division of Water Resources, City, or County as appropriate and may occur following a finding of “no practical alternatives” and issuance of an Authorization Certificate pursuant to paragraph 8.5.11, No Practical Alternatives/Authorization Certificate.
 - 3. **Allowable with Mitigation**

An allowable with mitigation use requires written authorization from the North Carolina Division of Water Resources, City, or County as appropriate and may occur following a finding of “no practical alternatives” and issuance of an Authorization Certificate pursuant to paragraph 8.5.11, No Practical Alternatives/Authorization Certificate, and approval of a mitigation strategy pursuant to paragraph 8.5.12, Mitigation.

G. Table of Uses

The following table sets out potential new uses within the riparian buffer, or outside of the buffer with impacts upon the buffer, and categorizes them as exempt, allowable, or allowable with mitigation. The requirements for each category are contained in paragraph F, Use Category Requirements, above. All uses not categorized as exempt, allowable, or allowable with mitigation are prohibited and may not occur within the riparian buffer or outside of the riparian buffer with impacts on the buffer unless a variance is obtained pursuant to paragraph 8.5.13, Variances. Uses include construction, monitoring, and maintenance activities.

Use	Category
Key (see paragraph 8.5.10F, Use Category Requirements): E = Exempt; A = Allowable; AM = Allowable with Mitigation; X or not listed = Prohibited; NA = Not applicable	
Outside of the Neuse River Basin, access trails: pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps, overlooks, view points, and other water dependent activities:	
<ul style="list-style-type: none"> Pedestrian access trails that are restricted to the minimum width practicable and do not exceed four feet in width of buffer disturbance, and provided that installation and use does not result in removal of any tree and no impervious surface is added to the riparian buffer. 	E
<ul style="list-style-type: none"> Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of any tree or impervious surface is added to the riparian buffer. 	A
Airport facilities:	
<ul style="list-style-type: none"> Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer. 	X
<ul style="list-style-type: none"> Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer. 	X
<ul style="list-style-type: none"> Outside of the Neuse River Basin, activities necessary to comply with FAA requirements (e.g. radar uses or landing strips).¹ 	A
Archaeological activities not covered by another specific use.	E
Bridges not covered by another specific use.	A
Outside of the Neuse River Basin, canoe access provided that installation and use does not result in removal of any tree and no impervious surface is added to the buffer.	E
Dam maintenance activities:	
<ul style="list-style-type: none"> Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3. 	E
<ul style="list-style-type: none"> Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3. 	A
Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:	
<ul style="list-style-type: none"> New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies. 	E

Use	Category
Key (see paragraph 8.5.10F, Use Category Requirements): E = Exempt; A = Allowable; AM = Allowable with Mitigation; X or not listed = Prohibited; NA = Not applicable	
<ul style="list-style-type: none"> Outside of the Neuse River Basin, realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations. 	A
<ul style="list-style-type: none"> New (or altered if outside of the Neuse River Basin) drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients as directed by the appropriate jurisdiction and attenuate flow before the conveyance discharges through the riparian buffer. 	A
<ul style="list-style-type: none"> New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed. 	AM
Driveway crossings of streams and other surface waters subject to this section:	
<ul style="list-style-type: none"> Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer. 	A
<ul style="list-style-type: none"> Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer. 	A
<ul style="list-style-type: none"> In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer. 	A
<ul style="list-style-type: none"> In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer. 	AM
<ul style="list-style-type: none"> Outside of the Neuse River Basin, driveway impacts other than crossing of a stream or other surface waters subject to this section. 	AM
Fences:	
<ul style="list-style-type: none"> Fences on single-family lots provided that disturbance is minimized and installation does not result in removal of any tree (or, within the Neuse River Basin, forest vegetation). 	X
<ul style="list-style-type: none"> Fences on lands other than single-family lots provided that disturbance is minimized and installation does not result in removal of any tree (or, within the Neuse River Basin, forest vegetation) 	X
<ul style="list-style-type: none"> Outside of the Neuse River Basin, fences provided that disturbance is minimized and installation results in removal of any tree. 	X
Fertilizer application: one-time application only, to establish vegetation.	E
Forest harvesting as regulated by the State of North Carolina pursuant to 15A NCAC 02B .0233 and 15A NCAC 02B .0267.	Per State Regulation
Greenway / hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.	A
Historic preservation not covered by another specific use.	E
Landscaping of the outer 20 feet of a riparian buffer in the Urban, Compact Neighborhood, or Downtown Tier that is not located in a watershed protection overlay in accordance with an approved City or County revegetation plan.	E
Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.	A
Mining activities:	

Sec. 8.5 Riparian Buffer Protection Standards

Use	Category
Key (see paragraph 8.5.10F, Use Category Requirements): E = Exempt; A = Allowable; AM = Allowable with Mitigation; X or not listed = Prohibited; NA = Not applicable	
<ul style="list-style-type: none"> Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of this section are established adjacent to the relocated channels. 	A
<ul style="list-style-type: none"> Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of this section are not established adjacent to the relocated channels. 	AM
<ul style="list-style-type: none"> Wastewater or mining dewatering wells with approved NPDES permit. 	E
Playground equipment:	
<ul style="list-style-type: none"> Playground equipment on single family lots that exist as of adoption of this section provided that installation and use does not result in removal of vegetation. 	E
<ul style="list-style-type: none"> Playground equipment installed on lands other than single-family lots or that requires removal of vegetation. 	X
Within the Neuse River Basin, ponds in natural drainage ways, excluding dry ponds; outside of the Neuse River Basin, ponds created by impounding streams and not used as stormwater BMPs:	
<ul style="list-style-type: none"> New ponds provided that a riparian buffer that meets the requirements of this section is established adjacent to the pond. 	A
<ul style="list-style-type: none"> New ponds where a riparian buffer that meets the requirements of this section is NOT established adjacent to the pond. 	AM
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel.	A
Railroad impacts other than crossings of streams and other surface waters subject to this section.	AM
Railroad crossings of streams and other surface waters subject to this section:	
<ul style="list-style-type: none"> Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer. 	A
<ul style="list-style-type: none"> Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer. 	A
<ul style="list-style-type: none"> Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer. 	AM
Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored.	A
Road impacts other than crossings of streams and other surface waters subject to this section.	AM
Road crossings of streams and other surface waters subject to this section:	
<ul style="list-style-type: none"> Road crossings that impact equal to or less than 40 linear feet of riparian buffer. 	A
<ul style="list-style-type: none"> Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer. 	A
<ul style="list-style-type: none"> Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer. 	AM
Outside of the Neuse River Basin, road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety:	
<ul style="list-style-type: none"> Less than or equal to 2,500 square feet of buffer impact. 	A
<ul style="list-style-type: none"> Greater than 2,500 square feet of buffer impact. 	AM

Use	Category
Key (see paragraph 8.5.10F, Use Category Requirements): E = Exempt; A = Allowable; AM = Allowable with Mitigation; X or not listed = Prohibited; NA = Not applicable	
Scientific studies and stream gauging.	E
<p>Within the Neuse River Basin, stormwater management ponds excluding dry ponds:</p> <ul style="list-style-type: none"> New stormwater management ponds provided that a riparian buffer that meets the requirements of this section is established adjacent to the pond. New stormwater management ponds where a riparian buffer that meets the requirements of this section is not established adjacent to the pond. <p>Outside of the Neuse River Basin, stormwater BMPs:</p> <ul style="list-style-type: none"> Wet detention, bioretention, and constructed wetlands. 	<p>A</p> <p>AM</p> <p>AM</p>
Streambank or, outside of the Neuse River Basin, shoreline stabilization.	A
<p>Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria of paragraph 8.5.12E, Riparian Buffer Restoration or Enhancement.</p> <ul style="list-style-type: none"> Less than or equal to 2,500 square feet of buffer disturbance and not perpendicular to the stream. Greater than 2,500 square feet of buffer disturbance and not perpendicular to the stream. Associated with culvert installation outside of the Neuse River Basin or bridge construction or replacement and not perpendicular to the stream Perpendicular to the stream 	<p>X</p> <p>X</p> <p>X</p> <p>A</p>
<p>Temporary sediment and erosion control devices, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria of paragraph 8.5.12E, Riparian Buffer Restoration or Enhancement.</p> <ul style="list-style-type: none"> To control impacts associated with uses approved by the appropriate jurisdiction or that have received a variance, provided that sediment and erosion control for upland areas is addressed to the maximum extent possible, outside the buffer. In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act. In-stream temporary erosion and sediment control measures for work within a stream channel. 	<p>A</p> <p>A</p> <p>A</p>
<p>Utility, electric, aerial, perpendicular crossings of streams and other surface waters subject to this section:^{2,3,5}</p> <ul style="list-style-type: none"> Disturb equal to or less than 150 linear feet of riparian buffer. Disturb greater than 150 linear feet of riparian buffer. 	<p>E</p> <p>A</p>
Utility, electric, aerial, other than perpendicular crossings: ^{2,3,5}	AM
Utility, electric, underground, perpendicular crossings: ^{3,4,5}	

Sec. 8.5 Riparian Buffer Protection Standards

Use	Category
Key (see paragraph 8.5.10F, Use Category Requirements): E = Exempt; A = Allowable; AM = Allowable with Mitigation; X or not listed = Prohibited; NA = Not applicable	
<ul style="list-style-type: none"> Disturb less than or equal to 40 linear feet of riparian buffer. 	E
<ul style="list-style-type: none"> Disturb greater than 40 linear feet of riparian buffer. 	A
Utility, electric, underground, other than perpendicular crossings: ^{1,4}	E
Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this section: ^{3,5}	
<ul style="list-style-type: none"> Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width. 	A
<ul style="list-style-type: none"> Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width. 	A
<ul style="list-style-type: none"> Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width. 	A
<ul style="list-style-type: none"> Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width. 	AM
<ul style="list-style-type: none"> Disturb greater than 150 linear feet of riparian buffer. 	AM
Utility, non-electric, other than perpendicular crossings. ^{1,4,5}	AM
Vegetation management, pursuant to applicable City or County guidelines.	
<ul style="list-style-type: none"> Emergency fire control measures provided that topography is restored. 	E
<ul style="list-style-type: none"> Planting vegetation to enhance the riparian buffer. 	E
<ul style="list-style-type: none"> Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised. 	E
<ul style="list-style-type: none"> Removal of individual trees that are in danger of causing damage to dwellings, other structures or human life, or outside of the Neuse River Basin, are imminently endangering stability of the streambank. 	E
<ul style="list-style-type: none"> Outside of the Neuse River Basin, removal of individual trees that are dead, diseased or damaged. 	E
<ul style="list-style-type: none"> Removal of poison ivy. 	E
<ul style="list-style-type: none"> Removal of either 1) within the Neuse River Basin, understory nuisance vegetation, or 2) outside of the Neuse River Basin, invasive exotic vegetation, both as defined in: <i>Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30.</i> 	E
<ul style="list-style-type: none"> Outside of the Neuse River Basin, vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet. 	A
<ul style="list-style-type: none"> Water dependent structures as defined in 15A NCAC 02B .0202, including their installation, maintenance, use, and removal. 	A
Water supply reservoirs:	
<ul style="list-style-type: none"> New reservoirs where a riparian buffer that meets the requirements of this section is established adjacent to the reservoir. 	A
<ul style="list-style-type: none"> New reservoirs where a riparian buffer that meets the requirements of this section is not established adjacent to the reservoir. 	AM
Water wells	

Use	Category
Key (see paragraph 8.5.10F, Use Category Requirements): E = Exempt; A = Allowable; AM = Allowable with Mitigation; X or not listed = Prohibited; NA = Not applicable	
<ul style="list-style-type: none"> Single family residential water wells. All other water wells. 	<p>E</p> <p>A</p>
<p>Wetland, stream and, outside of the Neuse River Basin, buffer restoration:</p> <ul style="list-style-type: none"> Wetland, stream and buffer restoration that requires NC Division of Water Resources approval for the use of a 401 Water Quality Certification. Wetland, stream and buffer restoration that does not require Division of Water Resources approval for the use of a 401 Water Quality Certification. 	<p>E</p> <p>A</p>
Outside of the Neuse River Basin, wildlife passage structures.	A

¹ Provided that:

- No heavy equipment is used.
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- The buffer meets the requirements of paragraph 8.5.5, Diffuse Flow Requirements.

² Provided that all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

³ Provided that poles or aerial infrastructure, including towers, shall not be installed within 10 feet of a water body absent a no practical alternative evaluation.

⁴ Provided that all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken upon completion of construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.

Use	Category
Key (see paragraph 8.5.10F, Use Category Requirements): E = Exempt; A = Allowable; AM = Allowable with Mitigation; X or not listed = Prohibited; NA = Not applicable	

- In wetlands, mats shall be utilized to minimize soil disturbance.

⁵ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

8.5.10 No Practical Alternatives/Authorization Certificate

- A.** A person who wishes to undertake a use designated as allowable or allowable with mitigation shall first submit a request for a “no practical alternatives” determination. Within the Neuse River Basin, the request shall be submitted to the North Carolina Division of Water Resources (Division). Outside of the Neuse River Basin, the request shall be submitted to the City or County as appropriate. In the request, the applicant shall certify that the project meets all of the following criteria:
1. The basic project purpose cannot be practically accomplished to better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 2. The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
 3. Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- B.** The applicant shall also submit at least the following information:
1. The name, address and phone number of the applicant;
 2. The nature of the activity to be conducted by the applicant;
 3. The location of the activity, including the jurisdiction;
 4. A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of the riparian buffers, and the location and dimensions of any disturbance in riparian buffers associated with the activity;
 5. An explanation of why the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
 6. Best management practices proposed to control the impacts associated with the activity.
- C.** Within 60 days of a complete submission, the appropriate jurisdiction (the Division acting pursuant to 15 NCAC 02B .0233 (8)) shall review the entire project and make a finding of fact as to whether the criteria in paragraph 1 above have been met. If they have, “no practical alternatives” has been established and the jurisdiction shall issue an Authorization Certificate. Failure to act within 60 days shall be construed as a finding of “no practical alternatives” and an Authorization Certificate shall be issued to the applicant. Outside of the Neuse River Basin, however, such 60-day deadline may be extended if one of the following occurs:
1. The applicant agrees, in writing, to a longer period;

2. The jurisdiction determines that the applicant requires an additional reasonable period of time in which to furnish requested information the jurisdiction deems necessary to its decision; or
 3. The final decision is to be made pursuant to a public hearing.
- D. The appropriate jurisdiction may attach conditions to an Authorization Certificate that support the purpose, spirit and intent of the state riparian buffer protection program and/or this section.
- E. Outside of the Neuse River Basin, the Authorization Certificate shall be denied if the applicant refuses access to its records or premises for the purposes of gathering information the appropriate jurisdiction deems necessary to its decision or if the jurisdiction determines that the applicant has failed to furnish requested information the jurisdiction deems necessary to its decision within the 60-day period or an additional period as authorized under paragraph C.2 above.
- F. Despite the provisions of Section 2.4, Board of Adjustment, appeals from Authorization Certificate determinations shall be to the Division Director, c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

8.5.11 Mitigation

Mitigation is required where: 1) a person wishes to undertake a use designated as allowable with mitigation and has obtained a "no practical alternatives" determination; and 2) a person is required to perform mitigation as a condition of variance approval under this section. Within the Neuse River Basin, the proposal shall be submitted to the North Carolina Division of Water Resources (Division), which shall proceed pursuant to 15A NCAC 02B .0242. Outside of the Neuse River Basin, the proposal shall be submitted to the City or County as appropriate, which shall proceed pursuant to this section as authorized under 15A NCAC 02B .0268.

The appropriate jurisdiction (the Division acting pursuant to 15 NCAC 02B .0242) shall issue a mitigation approval upon determining that a proposal meets the requirements of this section. Within the Neuse River Basin, the approval shall specify the required area and location of mitigation. Outside of the Neuse River Basin, the approval shall identify at a minimum the option chosen, the required and proposed areas, and the mitigation location or offset payment amount as applicable. As stated in paragraph 8.5.2, Applicability, compliance with this entire section is required even where State standards are less stringent. Within the Neuse River Basin, final review by the City or County shall occur after any State action is completed.

A. Mitigation Options

The mitigation requirement may be met through one of the following options:

1. Participation in a private compensatory mitigation bank in the same hydrologic area, as defined in NCGS 143.214(11), as the proposed impact that is approved by the NC Department of Environmental Quality;
2. Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0269 contingent upon acceptance of payments by the

Division of Mitigation Services. This option is available to a nongovernment applicant only if option 1 is not available;

3. Donation of real property or of an interest in real property pursuant to paragraph D, Donation of Real Property, below to satisfy a compensatory mitigation fee in whole or in part;
4. Restoration or enhancement of a non-forested riparian buffer pursuant to paragraph E, Riparian Buffer Restoration or Enhancement, below; or
5. Construction of an alternative measure that reduces nutrient loading as well as or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Division.

B. Mitigation Area

The appropriate jurisdiction shall determine the required area of mitigation as follows:

1. Add the following areas to determine the impacts in square feet to each portion of the riparian buffer:
 - a. The area of the footprint of the use causing the impact to the riparian buffer;
 - b. The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and
 - c. The area of any ongoing maintenance corridors within the riparian buffer associated with the use; and
2. Apply the following multipliers to the impacts determined in paragraph 1 to each portion of the riparian buffer:
 - a. Impacts to the inner 30 feet of the riparian buffer shall be multiplied by three;
 - b. Impacts to the outer 20 feet of the riparian buffer shall be multiplied by one and one-half; and
 - c. Impacts to wetlands within those two portions of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

C. Mitigation Location

1. Within the Falls Reservoir Watershed, mitigation shall be located within the Upper Falls Watershed, as defined in 15A NCAC 2B.0275 and .0276, and the same distance from, or closer to, the Upper Falls Reservoir, as defined in 15A NCAC 2B.0275 and .0276, as the proposed impact, and as close to the location of the impact as feasible. Alternatively, mitigation may be located anywhere within the Upper Falls Watershed provided that the mitigation proposal accounts for differences in delivery of nutrients to the Upper Falls Watershed resulting from differences between the locations of the buffer impact and mitigation.
2. Within the Jordan Reservoir Watershed, mitigation shall be located within the same subwatershed, as defined in 15A NCAC 02B.0262, and the same distance from, or closer to, the reservoir as the proposed impact, and as close to the location of the impact as feasible. Alternatively, the applicant may propose mitigation anywhere within the same subwatershed, as defined in 15A NCAC 02B.0262, provided that the mitigation proposal

accounts for differences in delivery of nutrients to the affected arm of the reservoir resulting from differences between the locations of the buffer impact and mitigation.

3. In any location, mitigation of riparian buffer loss in the watershed of a drinking water supply shall be performed in the watershed of that drinking water supply and as may be further limited by the North Carolina Environmental Management Commission.

Additional location requirements for the property donation option are enumerated in paragraph D, Donation of Property, below.

D. Donation of Property

1. Donation of real property interests that meet the requirements listed below may partially or fully satisfy payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund, calculated pursuant to 15A NCAC 02B .0269. The value of the property interest shall be determined by an appraisal performed in accordance with paragraph 4 below. The donation shall satisfy the mitigation requirement if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee, the applicant shall pay the balance.
2. A conservation easement shall be accepted only if it is granted in perpetuity.
3. Any property interest shall be accepted only if it meets all of the following requirements:
 - a. In addition to the location requirements of paragraph C, Mitigation Location, above, the property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of, the Division's *Basinwide Wetlands and Riparian Restoration Plan* (within the Neuse River Basin) or its *Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin* (outside of the Neuse River Basin), both developed pursuant to NCGS 143-214.10;
 - b. The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration as defined in paragraph E.4 below;
 - c. The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet measured horizontally on a line perpendicular to the surface water;
 - d. The size of the restorable riparian buffer on the property shall equal or exceed the area of mitigation responsibility determined under paragraph B above;
 - e. Outside of the Neuse River Basin, restoration shall not require removal of man-made structures or infrastructure. Within the Neuse River Basin, the property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure, and restoration of the property shall be fully capable of offsetting the adverse impacts of the requested use;
 - f. The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
 - g. The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and transaction costs;

- ### E. Riparian Buffer Restoration or Enhancement

- a. The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to paragraph B, Mitigation Area, above; or
- b. The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to paragraph B, Mitigation Area, above;

2. The location of the riparian buffer restoration or enhancement shall comply with the requirements of paragraph C, Mitigation Location, above;
3. The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet measured horizontally on a line perpendicular to a vertical line marking the top of the bank for a stream or the normal water level for a pond, lake, or reservoir;
4. Outside of the Neuse River Basin, enhancement and restoration shall each have the objective of establishing a forested riparian buffer. Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, meaning greater than or equal to 100 trees per acre but less than 200 trees per acre, a buffer shall be enhanced. Where existing woody vegetation is absent, meaning less than 100 trees per acre, a buffer shall be restored;
5. The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of paragraph 8.5.11, No Practical Alternatives/Authorization Certificate. The applicant shall then submit a restoration or enhancement plan to the City or County as appropriate. The restoration or enhancement plan shall contain the following:
 - a. A map of the proposed restoration or enhancement site;
 - b. A vegetation plan. The vegetation plan shall include trees as specified under paragraph 9.2.3B.6, Mixing of Tree Species, and the *Durham Landscape Manual*, planted at a density sufficient to provide 320 trees per acre at maturity with at least 50% of those trees having the potential of attaining a two and a half inch or greater dbh within seven years;
 - c. A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;
 - d. A fertilization plan; and
 - e. An implementation schedule;
6. Within one year after restoration or enhancement plan approval, the applicant shall present proof to the appropriate jurisdiction that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, the applicant shall be in violation of both the State and local riparian buffer protection programs;
7. The mitigation area shall be placed under a perpetual conservation easement that provides for protection of the property's nutrient removal functions;
8. The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

8.5.12 Variances

A person who wishes to undertake a prohibited use shall first submit a request for a minor or major variance to the appropriate jurisdiction as stated below. A minor variance is required for any activity that impacts only the outer 20 feet of a riparian buffer. A major variance is required for any activity that impacts any portion of the inner 30 feet of a

riparian buffer. Such variances are separate from variances authorized under Sec. 3.14, Variance.

A. Within the Neuse River Basin

1. Minor Variance

Pursuant to 15 NCAC 02B .0233 (9), a minor variance request shall be submitted to the North Carolina Division of Water Resources (Division) for review and decision. The Division may attach conditions to approval that support the purpose, spirit and intent of the riparian buffer protection program. Appeal from the Division decision shall be to the Office of Administrative Hearings.

2. Major Variance

Pursuant to 15 NCAC 02B .0233 (9)(c), a major variance request shall be submitted to the Division for initial review. If the Division determines that the request meets the requirements of paragraph 3, Variance Requirements, below, it shall submit preliminary findings to the NC Environmental Management Commission c/o the Division of Water Resources, 401 Oversight Express Permitting Unit, or its successor. Within 90 days after receipt by the Director of a complete application, the Commission shall approve, approve with conditions or stipulations, or deny the request. Upon and in accordance with the Commission's decision, the Division shall issue a final decision granting, granting subject to conditions or stipulations, or denying the major variance. Appeal from either the initial Division determination or the Commission decision shall be to the Office of Administrative Hearings.

3. Variance Requirements

Pursuant to 15 NCAC 02B .0233 (9)(a), the Division shall make a finding of fact as to whether the following requirements have been met:

- a. There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements; Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
 - (1) If the applicant complies with the provisions of this section, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division shall consider whether the variance is the minimum possible deviation from the terms of this section that shall make reasonable use of the property possible;
 - (2) The hardship results from application of this section to the property rather than from other factors such as deed restrictions or other hardship;
 - (3) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property;
 - (4) The applicant did not cause the hardship by knowingly or unknowingly violating this section;

- (5) The applicant did not purchase the property after the effective date of 15A NCAC 02B .0233, Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers, and then requesting an appeal; and
- (6) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice;
- b. The variance is in harmony with the general purpose and intent of this section and preserves its spirit; and
- c. In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

B. Outside of the Neuse River Basin

1. Minor Variance

A minor variance request shall be submitted to the City or County as appropriate for review and decision. The City or County may attach conditions to approval that support the purpose, spirit and intent of the riparian buffer protection program and this section. Despite the provisions of Section 2.4, Board of Adjustment, appeal from the City or County decision shall be to the Division Director, c/o the 401 Oversight Express Permitting Unit, or its successor. The Director's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

2. Major Variance

A major variance request shall be submitted to the City or County as appropriate for initial review. If the City or County determines that the request meets the requirements of paragraph 3, Variance Requirements, below, it shall submit preliminary findings to the North Carolina Environmental Management Commission c/o the Division of Water Resources, 401 Oversight Express Permitting Unit, or its successor. Within 90 days after receipt by the City or County of a complete application, the Commission approves, approves with conditions and stipulations, or denies the request. Despite the provisions of Section 2.4, Board of Adjustment, appeal from the initial City or County determination or the Commission decision shall be to Superior Court.

3. Variance Requirements

The City or County shall make the following three findings of fact in order to determine that the variance requirements are met:

- a. There are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. The following criteria must all be met in order to make such finding:
 - (1) If the applicant complies with the provisions of this section, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the variance shall be the minimum possible deviation

from the terms of this Ordinance that shall make reasonable use of the property possible;

- (2) The hardship results from application of this section to the property rather than from other factors such as deed restrictions or other hardship;
 - (3) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this section would not allow reasonable use of the property;
 - (4) The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
 - (5) The applicant did not purchase the property after the effective date of this Ordinance, and then request a variance; and
 - (6) The hardship is rare or unique to the applicant's property.
- b.** The requested variance is in harmony with the general purpose, spirit and intent of the state riparian buffer protection requirements and/or this section; and
 - c.** In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

Sec. 8.6 Water Supply Reservoir Buffer

8.6.1 Reservoir Buffer Standards

- A. A reservoir buffer shall be maintained from the normal pool of each water supply reservoir as shown in the table below, except that the buffer requirement of this section shall not apply to land that does not naturally drain to that reservoir. If the land around any reservoir does not naturally drain to that reservoir, the riparian buffer requirements of Sec. 8.5, Riparian Buffer Protection Standards, shall apply.

Reservoir	Buffer Width
Lake Michie	250 feet
Little River Reservoir	250 feet
Jordan Reservoir	250 feet ¹
Falls Reservoir	250 feet ¹

¹ On nonresidential uses, the buffer width shall extend to 1,000 feet in accordance with paragraph 4.11.4, Nonresidential Land Use Restrictions.

- B. Reservoir buffers shall remain in natural undisturbed vegetation, except for intrusions allowed pursuant to Sec. 8.5, Riparian Buffer Protection Standards.

8.6.2 Buffer Reductions

- A. At the request of a property owner, the governing body may reduce the reservoir buffer requirements through the issuance of a Major Special Use Permit, pursuant to Sec. 3.9, Special Use Permit, whenever it determines that:
1. The reservoir buffer would result in exceptional hardship, depriving the property owner of all reasonable use of the property.
 2. The proposed intrusion into the reservoir buffer is the minimum amount necessary to relieve that exceptional hardship.

The maximum reduction permitted is to the riparian buffer width required under Sec. 8.5, Riparian Buffer Protection Standards.

- B. In making its determination, the governing body shall consider topography, erosion potential, and the size of the parcel, in addition to the review factors specified in paragraph 3.9.8, Criteria for Approval or Major and Minor Special Use Permits.

Sec. 8.7 Watershed Protection Overlay Standards

8.7.1 Applicability

The watershed protection overlay standards of this section shall apply to the Watershed Protection Overlay as set forth in Sec. 4.11, Watershed Protection Overlay.

8.7.2 General Requirements

A. Minimum Lot Size

- In all Watershed Protection Overlays, except F/J-B and E-B, the minimum lot sizes indicated in the following table shall be applied in all new subdivisions unless the subdivision uses the cluster provision in accordance with Sec. 6.7, Cluster Subdivision, or the conservation subdivision provisions of paragraph 6.2.4, Conservation Subdivision.

Overlay	Minimum Lot Size		
	Rural Tier	Rural Tier – Rural Village	Suburban Tier
M/LR-A	3 acres		20,000 square feet
M/LR-B	3 acres	1 acre	20,000 square feet
F/J-A	3 acres		1 acre
E-A	Not Applicable		20,000 square feet

- In the F/J-B and E-B overlays, developers of single-family subdivisions shall comply with the requirements of the underlying zoning district.

B. Impervious Surface Limits

- Any development in a Watershed Protection Overlay shall be subject to limits on the amount of impervious surfaces permitted in accordance with the following table. Development plans, site plans, preliminary plats, and final plats shall clearly identify the amount of existing and proposed impervious surfaces.

Overlay	Low Density Option		High Density Option
	Impervious Surface Limit		Impervious Surface Limit
M/LR-A	6%		Not permitted
M/LR-B	Rural Tier	6%	Not permitted
	Rural Village	12%	24%
F/J-A	Within one-half mile of the normal pool: 6%; Between one-half and one mile from the normal pool: 9%		Not permitted in the Rural Tier. 40%, for all areas not in the Rural Tier and for those uses allowed in Sec. 4.11.4, Nonresidential Land Use Restrictions; Nonresidential Land Use Restrictions, intensities greater than 25% shall require a Major Special Use Permit pursuant to Sec. 3.9, Special Use Permit.
F/J-B, E-B	24%		70%
E-A	24%		Not permitted

- The impervious surface limit provisions of this section can be exceeded through an impervious surface credit transfer. Credit for the impervious surfaces allowed on one or more parcels ("donor parcels") can be transferred to non-contiguous parcels ("receiving

parcels”), such that the amount of impervious surface available for a development project would be the total of what is normally allowed on the receiving parcel plus what is transferred from the donor parcel(s). Impervious surface credit transfer is subject to the following provisions:

- a. The donor parcel and receiving parcel shall be located within the same water supply watershed.
- b. The impervious surface credit transfer shall not be from a donor parcel in Area B to a receiving parcel in Area A, or from a donor parcel in an F/J-A area with a 9% limit to a receiving parcel in an F/J-A area with a 6% limit.
- c. The portion of the donor parcel which is restricted from development as part of the impervious surface credit transfer shall remain in a vegetated or natural state or used for crop production or pasture provided that best management practices (BMPs) as developed by the Soil and Water Conservation District are utilized. The portion of the donor site restricted from development shall be protected from all future development through use of a permanent conservation easement in favor of either:
 - (1) Durham County or the City of Durham; or
 - (2) A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements (the organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer to the County or City, as appropriate, in the event the organization becomes unable to carry out its functions). If the entity accepting the easement is not the County or City, then a third right of enforcement favoring the County or City, as appropriate, shall be included in the easement.
- d. The impervious surface credit transfer shall be reviewed and approved through use of the site plan process pursuant to Sec. 3.7, Site Plan Review.
- e. The donor parcel shall be deemed appropriate for acceptance by the County or City, as appropriate, under the Durham County Review Criteria for Acceptance of Conservation Easements for Impervious Surface Transfer.

C. Stormwater Control Requirements

Where development proposes intensity greater than the maximum authorized by the Low Density Option, engineered stormwater controls shall be used to control stormwater runoff from the first inch of rainfall in order to meet water quality concerns.

D. Ownership, Design, and Maintenance of Engineered Stormwater Controls

1. Unless otherwise approved, ownership of the engineered stormwater controls shall remain with the property owner or a property owner's association, which shall be responsible for the continued care and maintenance of such controls.
2. Engineered stormwater controls shall be designed and constructed in accordance with standards and specifications established by the City Public Works Director or County Engineer, or their designees, as appropriate.

3. Except as allowed in paragraph c below, no building permit shall be issued for a site proposed for development, until:
 - a. The City Public Works Director or County Engineer, or their designees, as appropriate, has approved plans and specifications for the proposed engineered stormwater controls and the property owner has entered into an Agreement and Covenants or Operation and Maintenance Agreement with the City or County, as appropriate, in accordance with the terms established by either the City Public Works Director or County Engineer, or their designees, as appropriate; and
 - b. The property owner has posted a performance bond, other surety instrument, or other payment satisfactory to the City or County, as appropriate, in an amount determined by the City Public Works Director or County Engineer, or their designees, as appropriate to assure construction, maintenance, repair, and/or reconstruction necessary for adequate performance of the engineered stormwater controls.
 - c. For office, institutional, commercial, industrial, and multi-family projects, building permits may be issued; but construction drawing approval, or water or sewer permit approval, shall be withheld until compliance with paragraphs a and b above.
 - d. The Agreement and Covenants or Operation and Maintenance Agreement required under paragraph a, above, may be required prior to site plan or preliminary plat approval.
4. No certificate of compliance shall be issued for any structure constructed within a site proposed for development, other than as allowed below, until the City Public Works Director or County Engineer, or their designees, as appropriate, has approved construction of the engineered stormwater controls and after review and approval of submitted "as-built" drawings. Notwithstanding this requirement, the Stormwater Division of the City may allow for delay in approval of construction of stormwater controls and submission and approval of as-built drawings for single family housing, duplexes, and townhouses) and other developments requiring multiple certificates of occupancy in accordance with adopted policies of the City.

E. Riparian Buffers

Riparian buffers are required in accordance with Sec. 8.5, Riparian Buffer Protection Standards.

F. Wastewater Treatment and Facilities

1. Wastewater Treatment

Except as indicated below, wastewater treatment facilities shall be prohibited in all Watershed Protection Overlays.

- a. Individual on-site ground absorption systems shall be permitted, subject to the approval of the Durham County Health Department or the State of North Carolina, as applicable.
- b. A spray irrigation wastewater treatment system to serve a single-family house shall be permitted, provided that:
 - (1) The owner enters into a written agreement with the Durham County Health Department which:
 - (a) Provides for Health Department access to the property for the purpose of monitoring the system during its construction and operation; and
 - (b) Provides that the owner and certified operator shall provide to the Health Department copies of any and all applications, plans, permits, reports and any other documents concerning but not limited to the permitting, system, design, construction, operation, monitoring or repair of the system.
 - (2) The owner shall not act as the certified operator for a spray irrigation system to be installed on his or her property.
- c. Publicly-owned wastewater treatment facilities, and replacement and expansions of such facilities, shall be allowed in F/J-B and E-B overlays.
- d. Wastewater treatment facilities may be permitted in the F/J-A overlay through the issuance of a Major Special Use Permit pursuant to Sec. 3.9, Special Use Permit, subject to the restrictions described in Sec. 12.7, Water and Sanitary Sewer Systems.

2. Sanitary Sewer Services

- a. Except in the Rural Tier, public and private sanitary sewer lines, force mains, and pump stations shall be permitted within all Watershed Protection Overlays. Public and private pump stations shall be equipped with the following safety features:
 - (1) Battery-backed alarm systems activated by pump failure or power outage, connected by an automatic dialer to a 24-hour maintenance service approved by the City Public Works Director or County Engineer, or their designees, as appropriate.
 - (2) Provision for connection of a portable generator. The City Public Works Director or County Engineer, or their designees, as appropriate, may require the pump station to be equipped with on-site, stand-by power.
- b. Within the Rural Tier, new public or private sanitary sewer lines or outfalls, including necessary force mains and pump stations, may be permitted within the Watershed Protection Overlays subject to City Council or Board of Commissioners approval, as appropriate:
 - (1) To serve an existing use or structure for which a health hazard has been documented by the County Health Department or the State of North Carolina; or

- (2) If associated with a wastewater treatment facility permitted pursuant to paragraph 1, Wastewater Treatment, above.
- c. In considering such extensions, all reasonable alternatives shall be considered prior to a decision to extend the sewer services. All service connections, installed in accordance with the North Carolina Plumbing Code, shall be permitted only in accordance with Article III, Water and Sewer Main Extensions, of Chapter 70, Utilities, of the Durham City Code.

G. Hazardous and Nuclear Materials

1. Prior to site plan approval, an Emergency Contingency Plan shall be prepared and submitted through the Planning Department to the Durham County Fire Marshall and the Water Management Director for review and approval. The Emergency Contingency Plan shall be prepared in accordance with the requirements in the Superfund Amendments and Reauthorization Act (SARA), Title III and shall be updated annually. In addition, the Emergency Contingency Plan shall include:
 - a. A site plan showing buildings and the locations of points of storage, transfer and use of nuclear and hazardous materials;
 - b. A list of nuclear and hazardous materials kept on-site in any quantities;
 - c. The location of spill control valves on any bridges and causeways; and
 - d. The person responsible for on-site spill control and containment, and the appropriate means of contacting that person on a 24-hour basis.
2. Any container or tank used to store hazardous materials shall be equipped with leak detection devices and shall be double-walled or have other secondary containment features.
3. Points of storage, transfer and use of substantial quantities of hazardous materials shall be protected by a dike or comparable containment structure, constructed of a material resistant to hazardous material the dike or structure is designed to contain. The dike or structure shall be sized to handle at least the maximum amount of material to be stored or used and shall be constructed and installed in a manner to exclude rainwater and stormwater runoff.
4. All floor drains that could collect hazardous materials shall be connected to a corrosion resistant tank or catch basin sized to handle the maximum amount of hazardous material to be stored or used. These floor drains shall not be open to the site's natural drainage system and discharges to the site's storm drainage system or to adjacent surface waters shall be prohibited.
5. Points of storage, transfer and use of hazardous or nuclear materials shall have roof coverage.

8.7.3 Exceptions

All development within Watershed Protection Overlays shall be subject to the restrictions in this section, with the following exceptions:

A. Existing Development

For the purposes of this section, existing development shall be considered to include any impervious surfaces constructed before January 1, 1994. All new uses and activities and all expansions of previously-existing uses and activities shall conform to paragraph 4.11.4, Nonresidential Land Use Restrictions and paragraph 8.7.2, General Requirements.

B. Existing Single-Family Lots

New construction and additions to existing residential buildings on single-family residential lots recorded prior to January 1, 1994 shall be constructed in accordance with the watershed protection regulations, if any, in effect at the time the lot was created. In Rural Villages, as defined on the Future Land Use Map of the *Durham Comprehensive Plan*, such lots shall use the current standards or those in effect at the time the lot was created, whichever is less restrictive.

C. Stormwater Control Exemptions

Proposed development projects not in the Rural Tier, and in F/J-B or E-B overlays involving less than one acre cumulatively, of land disturbing activity shall be exempt from the stormwater control requirements indicated in this Section.

8.7.4 High Density Option Approval

Any development utilizing the High Density Option within the F/J-A overlay shall require site plan approval by the appropriate governing body.

8.7.5 Changes to Tier Boundaries

Neither the City nor the County shall extend the Urban or Suburban Tier boundaries further into the M/LR-A or F/J-A overlays.

Sec. 8.8 Steep Slope Protection Standards

8.8.1 Purpose

The primary purpose for the slope protection standards is to minimize grading, land instability and the removal of vegetation in order to:

- A.** Protect the quality of wetlands and water courses below the slope from increased sedimentation;
- B.** Protect steep slope plant and animal habitat from disturbance and development; and
- C.** Preserve the aesthetic quality of the natural terrain.

8.8.2 Exception – Sedimentation and Erosion Control

Notwithstanding the requirements of this section, steep slopes for purposes of sedimentation and erosion control are defined in paragraph 12.10.4B, Stabilization of Disturbed Land, and regulated under Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control.

8.8.3 Steep Slope Areas

A. Applicability

- 1.** Steep slope areas refer to natural grades and shall not include man-made grades.
- 2.** Slope is the relationship of vertical rise to horizontal run, expressed as a percentage. Steep slope areas shall be defined as land areas that:
 - a.** Have a grade of 25% or more;
 - b.** Have an area of 5,000 square feet or greater; and
 - c.** Are located within 200 feet of any floodway fringe or perennial stream or within 100 feet of an intermittent stream.
- B.** Slope calculations shall use the smallest contour interval for which maps are available. Steep slope areas shall be determined irrespective of tract boundaries.
- C.** Steep slope areas shall be clearly indicated on all site plans, development plans, preliminary plats and final plats. When a property owner or developer believes that the presence or location of a steep slope area is different than what is shown on the appropriate topographic map, the the property owner or developer shall provide a field survey to determine the location or presence of the moderate or steep slope area for purposes of meeting the requirements of this section.

8.8.4 Steep Slope Development Limitations

Development and land disturbing activity on steep slope areas shall be conducted only in accordance with the following requirements. Compliance with these requirements shall be determined by the approving authority.

- A.** The grade of reconstructed slopes shall not exceed 50%.
- B.** On any tract proposed for construction, no more than 15% of the steep slope area on the tract shall be graded. For purposes of this calculation, the land areas of individual steep

slope areas on the tract shall be added together to establish the total steep slope area for the tract.

- C. Proposed right-of-way for major thoroughfares, minor thoroughfares and collector streets shall be exempt from the steep slope area grading limits of this section.

8.8.5 Density Credits

The amount of land designated as steep slopes shall be credited for residential density at a rate of 15% of that allowed by the zoning.

Sec. 8.9 Wetlands Protection Standards

8.9.1 Purpose

The primary purpose of the wetlands protection standards is to conserve and maintain natural wetlands in an undisturbed vegetated state in order to provide storage of stormwater runoff, minimize degradation of preserved wetlands from the impacts of adjacent development, improve water quality and preserve plant and wildlife habitat.

8.9.2 Application of Wetlands Protection

The City and County acknowledge the pre-eminence of the Federal and State governments with regard to the identification and regulation of wetlands. Accordingly, the standards contained within this section shall not duplicate the requirements of the US Army Corps of Engineers (the Corps) or the North Carolina Department of Environmental Quality (DEQ), Division of Water Resources (Division), but shall require the buffering of wetland areas, identified by these agencies, on development plans, site plans, preliminary plats, final plats, and as otherwise required under Sec. 8.5, Riparian Buffer Protection Standards.

8.9.3 Wetland Buffer Applicability

- A. A wetland buffer shall not be required for any wetland approved for dredging or filling under a Section 404 Permit issued by the Corps or a Section 401 Water Quality Certification issued by the Division.
- B. A wetland buffer shall not be required for wetland areas associated with man-made ponds unconnected to intermittent or perennial streams or to man-made drainage ditches.
- C. A wetland buffer shall be required for any wetland area one acre or greater in size.

8.9.4 Wetland Buffer Width

The wetland buffer shall be provided along the perimeter boundary of the wetland area and shall be at least 25 feet in width.

8.9.5 Wetland Buffer Standards

Wetland buffers shall be governed by Sec. 8.5, Riparian Buffer Protection Standards, except where it may conflict with this section, in which case this section applies.

Sec. 8.10 Durham Inventory Site Protection Standards

Sites listed in the Durham County Inventory of Important Natural Areas, Plants and Wildlife, which in the case of a conflict may be superseded or supplemented by more current information from the North Carolina Heritage Program as determined by the Planning Director, are protected through a series of development standards, including, but not limited to:

- A.** Site plan review procedure in Sec. 3.7;
- B.** Special use permits in Sec. 3.9;
- C.** Conservation subdivisions in paragraph 6.2.4;
- D.** Open space in Sec. 7.2; and
- E.** Tree protection and tree coverage in Sec. 8.3.

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Article 9 | Landscaping and Buffering

Sec. 9.1 General

9.1.1 Purpose

The standards of this section provide for the preservation of existing vegetation and for the installation and maintenance of new vegetation and other landscape architectural features. The purpose of these standards is to:

- A. Improve property and community appearance without compromising community safety, including minimization of the offsite visual impact of extensive land disturbance;
- B. Allow for the ecological benefits provided by plant materials, including protection of land from unnecessary erosion and watercourse sedimentation, reduction of stormwater runoff, improvement of air quality, and provision of wildlife habitat;
- C. Reduce the urban heat island effect;
- D. Enhance the beauty of the built environment; and
- E. Enhance the privacy and welfare of citizens by separating incompatible land uses.

9.1.2 Applicability

- A. The landscaping and buffering standards of this section shall apply to all proposed development for which a site plan or preliminary plat is required.
- B. Land used toward achieving the requirements of the section need not hold the same zoning designation as the use to which the landscaping and buffer applies, unless the property is zoned with a development plan showing all requirements met onsite. If the landscaping or buffer is not on site, the landscaping shall either be on the same lot or on contiguous property under the same permanent possession or control as the lot on which the use is located.

Sec. 9.2 Landscape Design

9.2.1 Landscape Manual

The *Landscape Manual for Durham, North Carolina*, also referred to as the *Landscape Manual* shall provide the following:

- A.** A list of species that shall be used within the City and County of Durham, including appropriate applications and specifications, to satisfy the requirements of this Article for site plans and preliminary plats.
- B.** Diagrams depicting required planting methods that shall be included, as applicable, on site plans and preliminary plats.
- C.** Diagrams depicting required tree protection fencing specifications that shall be included, as applicable, on site plans and preliminary plats.
- D.** Diagrams illustrating recommended methods for buffer depictions on site plans and preliminary plats.
- E.** Recommended best practices for landscaping methodologies including, but not limited to, “water-wise” approaches to landscape materials and incorporation of Crime Prevention Through Environmental Design (CPTED) principles.

9.2.2 Basic Plant Types

There are five basic plant types referred to in this section, and all shall require the use of locally-adapted plants. They include deciduous canopy trees, evergreen canopy trees, deciduous understory trees, evergreen understory trees and shrubs, defined as follows:

- A. Deciduous Canopy Trees**
Large deciduous shade trees with a mature height of 30 feet or greater and a mature spread of 30 feet or greater in the Suburban or Rural tiers or, in the SRP-C District (County Only), Urban, Compact Neighborhood, and Downtown tiers, a mature height of 20 feet or greater.
- B. Evergreen Canopy Trees**
Trees at least 20 feet tall at maturity that usually have green foliage throughout all seasons of the year.
- C. Deciduous Understory Trees**
Small deciduous trees or large deciduous shrubs with a mature height of 10 to 30 feet.
- D. Evergreen Understory Trees**
Trees or large shrubs at least 10 feet tall at maturity that usually have green foliage throughout all seasons of the year.
- E. Shrubs (Deciduous and Evergreen)**
Prostrate or upright woody plants, either evergreen or deciduous, with a mature height usually less than 10 feet. Evergreen shrubs usually have green foliage throughout all seasons of the year.

9.2.3 Plant Material Requirements

Unless specified elsewhere in this Ordinance, plant material shall meet the minimum requirements listed below. When determining the quantity of plant material required, the quantity shall always be rounded up to the nearest whole number.

A. Plant Materials, General

All plant material shall meet or exceed size and shape relationships specified in the latest edition of The American Standard for Nursery Stock published by the American Association of Nurserymen.

B. Trees

1. Deciduous Canopy Trees

Deciduous canopy trees shall have a minimum size of two-inch caliper at time of planting, unless permitted under paragraph 8.3.1E.3.

2. Evergreen Canopy Trees

Evergreen trees shall have a minimum height of eight feet at the time of planting.

3. Deciduous Understory Trees

- a. Deciduous understory trees with single stems shall have at a minimum size of one-inch caliper and a minimum height of eight feet at the time of planting.
- b. Multi-stemmed deciduous understory trees shall have a minimum height of eight feet at the time of planting.

4. Evergreen Understory Trees

Evergreen understory trees shall have a minimum height of six feet at the time of planting.

5. Tree Spacing

- a. Canopy trees shall be planted at least 18 feet apart.
- b. Deciduous understory trees shall be planted at least 12 feet apart.
- c. The spacing between canopy and deciduous understory trees shall be at least 6 feet.

6. Mixing of Tree Species

When more than 20 trees are required to be planted on a site to meet these regulations, a mix of species shall be provided. The following table indicates the maximum percentage of trees of the same genus and species that may be planted.

Total Trees Planted on Site	Minimum Number of Species Required	Maximum Percentage of Any Species
20 trees or less	1	not applicable
21 to 50 trees	2	70%
51 to 100 trees	3	50%
101 to 200 trees	4	40%
201 to 300 trees	5	30%
301 to 500 trees	6	25%
Over 500 trees	7	20%

C. Shrubs

1. Deciduous and Evergreen Shrubs

- a. All shrubs shall be cold hardy and heat tolerant.
- b. Upright shrubs shall be a minimum of 15 inches in height at the time of planting.
- c. Shrubs shall not be planted closer than three feet on center. Shrubs shall not be planted closer than three feet to planted trees, nor within six feet of existing protected trees; however, no more than 25% of the root protection zone of an existing tree may be disturbed with new plantings.
- d. When planted as a hedge, the maximum spacing for 24-inch high shrubs shall be 36 inches on center. Spacing for other size shrubs shall as specified within the *Landscape Manual* pursuant to paragraph 9.2.1, *Landscape Manual*.

2. Mixing of Shrub Species

When more than 20 shrubs are required to be planted on a site to meet these regulations, a mix of species shall be provided. The following table indicates the maximum percentage of shrubs of the same genus and species that may be planted.

Total Shrubs Planted on Site	Minimum Number of Species Required	Maximum Percentage of Any Species
21 to 100 shrubs	4	30%
101 to 200 shrubs	5	25%
201 to 300 shrubs	6	20%
301 to 400 shrubs	7	20%
401 to 500 shrubs	8	20%
501 to 600 shrubs	9	20%
Over 601 shrubs	10	20%

D. Plant Species List

1. A list of plants by type and appropriate location or use to satisfy the requirements under this Article shall be maintained within the *Landscape Manual* pursuant to paragraph 9.2.1, *Landscape Manual*.
2. A list of prohibited plants identified as inappropriate for use within Durham City and County shall be maintained within the *Landscape Manual*. These plants shall not be used to satisfy landscaping requirements, either as existing or proposed plant material.
3. When a species or cultivar is proposed for use but is not listed within the *Landscape Manual*, a professional urban forester or certified plant professional shall certify that the

use of the plant material is appropriate for the intended use and location, and that it does not have invasive tendencies.

9.2.4 Landscape Plans

Landscaping plans shall be prepared by certified landscape architects or other professionals with a proficiency in preparing landscaping plans.

9.2.5 Installation

A. Easements

1. Trees can be planted in access or utility easements, including stormwater BMP facilities, provided that they are a species adapted for the nature of the easement and, in all easements other than overhead utilities, the entity responsible for the easement approves the location of the trees proposed for planting.
2. Existing trees can remain in dry detention ponds provided that the natural grade is undisturbed in the root protection zone, they are a species adapted to seasonal flooding, and it is documented that the pond shall be adequately maintained without disturbance to root protection zones.
3. Shrubs shall be installed at least five feet away from the flow line of a swale.
4. Shrubs can be planted in a public utility easement provided they are planted only within the outer three feet of the easement and are approved by the utility provider.

B. Tree Grates

Tree grates for required trees shall not be permitted in the Rural Tier. When used, such grates shall be sized and maintained to ensure continued health of any required tree and installed so as not to create any pedestrian hazard.

C. Groundcovers and Mulch

1. Groundcovers can be planted around trees, provided they are located outside of the planting hole.
2. Mulch shall be used in all areas where no other ground cover or grass is used to avoid bare spots.

D. Certification

The Planning Director, or designee, may authorize licensed landscape architects to certify that landscape plantings have been installed in conformance with the approved landscaping plan including planting sizes, species, and installation techniques in lieu of inspection by the Planning Department.

Sec. 9.3 Existing Vegetation Credits for Required Landscaping

9.3.1 Existing Vegetation

- A.** Healthy vegetation that is retained can be credited toward landscaping requirements.
- B.** Vegetation to be saved shall meet all requirements of paragraph 8.3.2, Protection of Existing Vegetation.

9.3.2 Existing Trees

- A.** Healthy canopy trees can be retained and credited toward landscaping requirements if each tree proposed for credit has a dbh of at least one inch, or larger if specified elsewhere in this ordinance, and all requirements of paragraph 8.3.2, Protection of Existing Vegetation, are satisfied. Credit given for existing, healthy, protected trees shall be a number equal to the value of the dbh of each protected tree divided by two inches, but no fraction thereof.
- B.** Credit shall be allocated on a one-for-one basis for healthy evergreen trees, deciduous understory trees, evergreen understory trees or shrubs. The size of material shall not be taken into account, except where such material is below the required minimum planting size, in which case no credit shall be granted.
- C.** In order to receive credit for any retained trees, at least 80% of the root protection zone shall remain undisturbed. Trees whose root protection zones fall outside the protected area but are within larger groups of trees, shall not count toward any landscaping requirements but shall be left in place unless they are diseased or otherwise hazardous to the integrity of the buffer or the development
- D.** Existing trees located within 30 feet of power lines or within utility easements shall not be eligible to receive credit, unless the tree is a species appropriate for underneath power lines or received approval to be located within the utility easement.

9.3.3 Sampling

- A.** All trees, shrubs and groundcover within a minimum 20 foot by 20 foot area for each unique stand of vegetation proposed to be retained shall be inventoried and identified on the landscape plan. Photographs can be used to supplement the sample but shall not replace it. For purposes of determining preserved tree coverage, shrubs and groundcover need not be included in the sampling.
- B.** The Planning Director, or designee, can require additional sample areas as needed to ensure a representative sample of the existing vegetation.

Sec. 9.4 Project Boundary Buffers

9.4.1 Applicability

- A.** Project boundary buffers shall be required in the Rural, Suburban, and Urban Tiers, considering the proposed use and zoning district and the adjoining uses and zoning districts.
- B.** No project boundary buffers shall be required for property in the Compact Neighborhood Tier, unless the proposed project is adjacent to residential development or property with a residential designation in the Suburban or Urban Tiers, in which case, project boundary buffers shall be required only on the side of the project adjacent to such property in the other Tier.
- C. Design Districts**
 - 1.** No project boundary buffers shall be required for property in Design Districts, unless the proposed project is adjacent to a residential district or use in the Urban or Suburban Tier.
 - 2.** Where required, project boundary buffers in Design Districts shall be provided at 20% opacity in accordance with paragraph 9.4.5C, Urban and Compact Neighborhood Tiers.
 - 3.** No buffers shall be required along rights-of-way in Design Districts regardless of their width.
- D.** No project boundary buffers shall be required for commercial crop production, except for permanent on-site sales facilities and associated vehicle use areas.
- E.** No project boundary buffers shall be required in a residential district or use adjacent to a Design district.

9.4.2 Location

- A.** Required project boundary buffers shall be provided along the perimeter of any lot or development except adjoining street or railroad rights-of-way that are greater than 60 feet in width.
- B.** Project boundary buffers shall be designated and dimensioned on all site plans and preliminary plats.

9.4.3 Standards

- A. Opacity**
 - 1.** The buffer standards in the table below address the opacity of the buffer that is required on the property boundary between zoning districts, and in some instances within a zoning district.
 - 2.** An opacity of 0.1 screens 10%, and an opacity of 1.0 would fully screen the use from adjacent properties during summer months no more than five years after planting.

B. Project Boundary Buffer Table

		ZONING DISTRICT OF ADJACENT PROPERTY																
		RR and PDR at Rural Density	RS-20, RS-10, RS-8 and PDR at Suburban Density	RU and PDR at Urban Density	RS-M, RU-M	RC	CI	CN	OI	SRP	SRP-C (County Only)	MU	UC	CG	CC	IL	IP	I
ZONING DISTRICT OF SUBJECT PROPERTY	RR and PDR at Rural Density	0/0	0/.2	.2/.6	.2/.8	.2/.8	0/.2	.2/.6	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.8	.2/.8	.2/.8	.2/.8	.2/1.0
	RS-20, RS-10, RS-8 and PDR at Suburban Density	.2/.2	0/0	.2/.4	.2/.6	.2/.6	0/.2	.2/.6	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.8	.2/.8	.2/.8	.2/.8	.2/1.0
	RU and PDR at Urban Density	.4/.6	.2/.4	0/0	.2/.6	.2/.6	0/.2	.2/.6	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.8	.2/.8	.2/.8	.2/.8	.2/1.0
	RS-M, RU-M	.6/.8	.4/.6	.4/.6	.2/.4	.2/.4	0/.2	.2/.6	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.8	.2/.8	.2/.8	.2/.8	.2/1.0
	RC	.6/.8	.4/.6	.4/.6	.2/.4	0/0	0/.2	0/0	.2/.6	.2/.6	.2/1.0	.2/.6	.2/.6	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	CI	.2/.2	.2/.2	.2/.2	.2/.2	.2/.2	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	0/0	.2/.4	.2/.4	.2/.4
	CN	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	0/0	.2/.6	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	OI	.4/.6	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	.2/.6	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	SRP	.4/.6	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	0/0	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	SRP-C (County Only)	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0	0/0	.4/.6	.4/.6	0/0	0/0	.4/.6	.4/.6	.2/4	.2/4	.2/4	.2/.4	.2/1.0
	MU	.4/.6	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	.2/.6	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	UC	.4/.6	.4/.6	.4/.6	.4/.6	.4/.6	0/0	0/0	0/0	0/0	.2/.6	0/0	0/0	.2/.6	.2/.6	.2/.6	.2/.6	.2/1.0
	CG	.6/.8	.6/.8	.6/.8	.6/.8	.4/.6	0/0	.4/.6	.4/.6	.4/.6	.2/.4	.4/.6	.4/.6	.2/.4	.2/.4	.2/.4	.2/.4	.2/1.0
	CC	.6/.8	.6/.8	.6/.8	.6/.8	.4/.6	0/0	.4/.6	.4/.6	.4/.6	.2/.4	.4/.6	.4/.6	.2/.4	.2/.4	.2/.4	.2/.4	.2/1.0
	IL	.6/.8	.6/.8	.6/.8	.6/.8	.4/.6	.2/.4	.4/.6	.4/.6	.4/.6	.2/.4	.4/.6	.4/.6	.2/.4	.2/.4	.2/.4	.2/.4	.2/1.0
	IP	.6/.8	.6/.8	.6/.8	.6/.8	.4/.6	.2/.4	.4/.6	.4/.6	.4/.6	.2/.4	.4/.6	.4/.6	.2/.4	.2/.4	.2/.4	.2/.4	.2/1.0
	I	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.2/.4	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0	.8/1.0

How to Use this Table: The second number represents the Total Buffer, which normally occurs across the property line, with unequal responsibility for buffering on both sides of the line based on intensity of the use or district. Therefore:

1. The first number indicates the required opacity when adjacent to undeveloped land.
2. The second number is the opacity required when adjacent to a development without a buffer.
3. If a buffer exists on adjacent property, the required opacity on the property to be developed shall be the difference between the opacity on the adjacent property from the total, or second, opacity number.
4. A zero means no project boundary buffer is required.

Example: A new development in the CG District abutting a developed RS District without a buffer would be required to provide a buffer with a total opacity of .8 (80% opaque). If the adjacent RS property were undeveloped, the requirement would be reduced to .6 (60% opaque), and the developer of the RS property would provide the remaining .2 (20%) at the time of development of the residential property.

C. Modifications of the Project Boundary Buffer Table

1. Multiplex and apartment development proposed in any district to be adjacent to single-family districts or single-family developments on other properties shall provide buffers in accordance with the provisions for RS-M or RU-M districts.
2. Nonresidential development proposed in a residential district to be adjacent to residential districts or residential developments (except for upper story residential or with any intervening street or railroad right-of-way) on other properties, that would not otherwise require a buffer, shall provide buffers in accordance with the provisions of the CN District in determining buffer requirements. Principal uses listed in paragraph 5.2.4F, Parks and Open Areas, except playgrounds and zoos, are exempt from this requirement.
3. Nonresidential uses proposed next to property used for residential purposes, although nonresidentially zoned, shall provide a buffer along the side of the property adjoining the property used residentially equivalent to one-half of the buffer width that would have been required for property with a residential zoning designation within that Tier.
4. The buffer requirement for a subject property zoned Industrial Light (IL) adjacent to property zoned Industrial (I), per the table in paragraph 9.4.3B, shall be 0.2/0.4 when the subject property is four acres or less in size.
5. Some uses may require additional buffering, as set forth in the specific use standards of Sec. 5.3, Limited Use Standards.

9.4.4 Natural Buffers

A. Natural Buffer Required

1. Existing healthy, natural forest cover and other vegetation shall be used to meet buffer requirements in the Rural and Suburban Tiers in the following instance:

- a. Where a buffer with an opacity of 0.8 or greater is required; and
 - b. Where the existing tree cover exceeds 15 feet in height; and
 - c. Where the existing tree canopy covers 75% or more of the required buffer area.
2. The minimum width of a required natural buffer shall be 50 feet.

B. Natural Buffer as an Option

In the Urban Tier and in projects in the Rural and Suburban Tiers that do not require use of a natural buffer, a natural buffer can be employed. A minimum natural buffer width of 25 feet or the width required to satisfy paragraph 9.4.5, Constructed Buffer, whichever is greater, shall be required in these instances.

C. Tree Protection in Natural Buffers

In addition to the requirements of paragraph 8.3.2, Protection of Existing Vegetation, trees within natural buffers shall be protected as follows:

1. For the trees with a dbh of 30 inches or less, 75% of the root protection zone shall be undisturbed; and
2. For trees over 30 inches dbh, at least 90% of the root protection zone shall be undisturbed.

D. Additional Planting

If a natural buffer does not meet the opacity standards required by paragraph 9.4.3B, Project Boundary Buffer Table, then additional plant material based upon the applicable planting table in paragraph 9.4.5, Constructed Buffer, shall be provided to meet those standards. Sampling of existing vegetation within a natural buffer pursuant to paragraph 9.3.3, Sampling, shall be required to determine if it meets this standard.

9.4.5 Constructed Buffer

A. Plant Units

The plant units listed below shall be considered comparable, and therefore interchangeable, as set forth below.

1. The following plant unit alternatives shall be used, unless otherwise specified in this Article, to satisfy the project boundary buffer requirements:
 - a. Alternative 1: Mixed Evergreen
 - b. Alternative 2: Deciduous
 - c. Alternative 3: Evergreen
 - d. Alternative 4: Overhead Utility
 - e. Alternative 5: Intense
2. Alternative 2, Deciduous, shall not be permitted adjacent to residential districts or uses unless employed with a wall pursuant to paragraph 9.4.8, Walls, Berms and Fences in Buffers.
3. Alternative 4, Overhead Utility, shall be permitted only where overhead utilities would conflict with the drip-line of canopy trees.

4. All shrubs used to meet plant unit requirements shall be upright shrubs.

B. Rural and Suburban Tier

1. The buffer width and planting requirements in the table below shall be used to meet the opacity standards established in paragraph 9.4.3, Standards. Use of the interactive buffer model established pursuant to paragraph 9.4.7, Interactive Buffer Model, shall not be permitted, except where the slope of the buffer is at least 15%, in which case the requirements of paragraph 9.4.5D, Existing Slope Impacts, shall be applied.

RURAL AND SUBURBAN TIERS

Opacity	Min. Width	Alternative 1 Mixed Evergreen	Alternative 2 Deciduous	Alternative 3 Evergreen	Alternative 4 Overhead Utility
Plant Material Required Per 100 Linear Feet					
0.2	10 feet	1 Canopy Tree 0 Evergreen Tree 1 Deciduous Understory 2 Evergreen Understory 13 Shrubs	2 Canopy Trees 0 Evergreen Tree 2 Deciduous Understory 0 Evergreen Understory 12 Shrubs	0 Canopy Tree 2 Evergreen Trees 0 Deciduous Understory 3 Evergreen Understory 13 Shrubs	0 Canopy Tree 0 Evergreen Tree 3 Deciduous Understory 2 Evergreen Understory 10 Shrubs
0.4	20 feet	3 Canopy Trees 1 Evergreen Tree 2 Deciduous Understory 5 Evergreen Understory 40 Shrubs	4 Canopy Trees 0 Evergreen Tree 6 Deciduous Understory 0 Evergreen Understory 38 Shrubs	0 Canopy Tree 4 Evergreen Trees 0 Deciduous Understory 9 Evergreen Understory 38 Shrubs	0 Canopy Tree 0 Evergreen Tree 7 Deciduous Understory 5 Evergreen Understory 30 Shrubs
0.6	30 feet	6 Canopy Trees 1 Evergreen Tree 4 Deciduous Understory 9 Evergreen Understory 70 Shrubs	7 Canopy Trees 0 Evergreen Tree 10 Deciduous Understory 0 Evergreen Understory 67 Shrubs	0 Canopy Tree 7 Evergreen Trees 0 Deciduous Understory 16 Evergreen Understory 68 Shrubs	0 Canopy Tree 0 Evergreen Tree 12 Deciduous Understory 9 Evergreen Understory 53 Shrubs
0.8	50 feet	6 Canopy Trees 1 Evergreen Tree 4 Deciduous Understory 10 Evergreen Understory 77 Shrubs	8 Canopy Trees 0 Evergreen Tree 11 Deciduous Understory 0 Evergreen Understory 73 Shrubs	0 Canopy Tree 8 Evergreen Trees 0 Deciduous Understory 17 Evergreen Understory 74 Shrubs	0 Canopy Tree 0 Evergreen Tree 13 Deciduous Understory 10 Evergreen Understory 58 Shrubs
1.0	80 feet	7 Canopy Trees 1 Evergreen Tree 5 Deciduous Understory 12 Evergreen Understory 85 Shrubs	10 Canopy Trees 0 Evergreen Tree 13 Deciduous Understory 0 Evergreen Understory 80 Shrubs	0 Canopy Tree 10 Evergreen Trees 0 Deciduous Understory 20 Evergreen Understory 83 Shrubs	0 Canopy Tree 0 Evergreen Tree 16 Deciduous Understory 12 Evergreen Understory 65 Shrubs

2. When proposed residential units adjoin an active agricultural use, the minimum buffer width shall be 50 feet, with a minimum opacity of 0.2.
3. Buffer widths can be reduced by up to 25% through the incorporation of a wall or berm pursuant to paragraph 9.4.8, Walls, Berms and Fences in Buffers. Application of this reduction in width shall provide a corresponding reduction in the number of required shrubs.

C. Urban, Compact Neighborhood, and Downtown Tiers

1. The buffer width and planting requirements in the table below shall be used to meet the opacity standards established in paragraph 9.4.3, Standards, for the Urban Tier and those areas of the Downtown and Compact Neighborhood Tiers that adjoin development in the Urban or Suburban Tiers and the opacity standards established in paragraph 9.4.1C for Design Districts.

URBAN, COMPACT, AND DOWNTOWN TIERS

Opacity	Min. Width	Alt. 1 Mixed Evergreen	Alt. 2 Deciduous	Alt. 3 Evergreen	Alt. 4 Overhead Utility	Alt. 5 Intense
Plant Material Required Per 100 Linear Feet Of Buffer						
0.2	10 feet	1 Canopy Tree 1 Evergreen Tree 1 Decid. Understory 1 Evergr. Understory 3 Shrub	1 Canopy Tree 0 Evergreen Tree 1 Decid. Understory 0 Evergr. Understory 4 Shrub	0 Canopy Tree 1 Evergreen Tree 0 Decid. Understory 2 Evergr. Understory 4 Shrub	0 Canopy Tree 0 Evergreen Tree 2 Decid. Understory 1 Evergr. Understory 1 Shrub	
0.4	15 feet	2 Canopy Tree 1 Evergreen Tree 2 Decid. Understory 3 Evergr. Understory 9 Shrub	4 Canopy Tree 0 Evergreen Tree 3 Decid. Understory 0 Evergr. Understory 14 Shrub	0 Canopy Tree 3 Evergreen Tree 0 Decid. Understory 5 Evergr. Understory 12 Shrub	0 Canopy Tree 0 Evergreen Tree 5 Decid. Understory 3 Evergr. Understory 3 Shrub	
0.6	20 feet ¹	4 Canopy Tree 1 Evergreen Tree 3 Decid. Understory 5 Evergr. Understory 18 Shrub	7 Canopy Tree 0 Evergreen Tree 5 Decid. Understory 0 Evergr. Understory 27 Shrub	0 Canopy Tree 6 Evergreen Tree 0 Decid. Understory 9 Evergr. Understory 24 Shrub	0 Canopy Tree 0 Evergreen Tree 9 Decid. Understory 5 Evergr. Understory 5 Shrub	2 Canopy Tree 4 Evergreen Tree 2 Decid. Understory 0 Evergr. Understory 19 Shrub 6-Foot Wall ²
0.8	22.5 feet				0 Canopy Tree 0 Evergreen Tree 13 Decid. Understory 7 Evergr. Understory 7 Shrub 6-Foot Wall ²	3 Canopy Tree 5 Evergreen Tree 3 Decid. Understory 0 Evergr. Understory 28 Shrub 6-Foot Wall ²
1.0	37.5 feet				0 Canopy Tree 0 Evergreen Tree 13 Decid. Understory 7 Evergr. Understory 7 Shrub 6-Foot Wall ²	4 Canopy Tree 6 Evergreen Tree 4 Decid. Understory 0 Evergr. Understory 31 Shrub 6-Foot Wall ²

¹ Use of the Intense Buffer will permit reduction of buffer width up to 25%.

² A solid hedge composed of a minimum of 40 evergreen understory trees per 100 linear feet can be substituted for a 6-foot wall.

2. The interactive buffer model established pursuant to paragraph 9.4.7, Interactive Buffer Model, shall be permitted to calculate acceptable reductions in buffer width or variable mixes of plant units. The model can also be used when the slope of the buffer is at least 15%, as set forth in paragraph 9.4.5D, Existing Slope Impacts.
3. For projects within the CI District and Design Districts, an alternative to project boundary buffers shall be permitted with the following provisions:
 - a. A solid hedge composed of a minimum of 40 evergreen understory trees per 100 linear feet is used in lieu of the buffer; or
 - b. A wall pursuant to paragraph 9.4.8, Walls, Berms and Fences in Buffers, is provided so long as any wall that is a structural part of a building may only be used if there is no glazing in the wall.

D. Existing Slope Impacts


Commentary: Proposed projects may require more than one type of buffer. For example, a project site might include a modest slope along the southern property line (requiring a flat land buffer) and a 20% hill on the northern property line (requiring an Upslope Buffer).

1. Buffers with at Least 15% Slope


a. General

- (1) Buffer design changes depending on the degree of slope and whether the property being developed is up or down slope from the property being protected.
- (2) On slopes of at least 15% but less than 25%, for each 100 feet of buffer section length, an upslope or downslope buffer shall be required.
- (3) On slopes of at least 25% for each 100 feet of buffer section length, a steep slope buffer shall be required.
- (4) Sloped buffer areas less than 100 feet in length, as measured parallel to the property line, and with less than five feet of difference in elevation between the project site and the adjacent property shall be considered flat lands and be exempt from providing slope buffers.

b. Downslope Buffer

- (1) Where the area containing the buffer slopes down from the adjacent property line toward the interior of the project at a slope of at least 15% but less than 25%, the buffer may be less effective because roof areas may be exposed (the adjacent property looks down onto the proposed site). In such cases, a steep slope buffer retaining the forest cover, or a standard project boundary buffer can be used buffer.
- (2) If a constructed buffer is to be provided, 60% of the buffer width (starting at the property line) shall be graded to a slope of less than 15% with the adjacent land. The fill shall return to grade at a slope not to exceed 1:3 (33%). This may require a wider buffer to accommodate the fill. The interactive buffer model established pursuant to paragraph 9.4.7, Interactive Buffer Model, shall be used to determine whether the buffer achieves the required opacity.

c. Upslope Buffers

- (1) Where the area containing the buffer slopes up from the adjacent property line toward the interior of the project site at a slope of at least 15% but less than 25%, the buffer may be more effective due to the masking potential of the slope. In such cases, a standard project boundary buffer, a steep slope buffer, or the interactive buffer model established pursuant to paragraph 9.4.7, Interactive Buffer Model can be utilized.

2. Steep Slope Buffer (Slope at least 25%)

a. Tree Covered Slopes

If a buffer area has a slope of at least 25% and tree coverage meeting the standards of paragraph 8.3.1D, Preserved Tree Coverage, exists on the site, the slope area shall be assumed to meet the requirements of a natural buffer with no healthy trees or shrubs removed and no grading or clearing permitted.

b. Slopes with Minimal Tree Coverage

If a buffer area has a slope of at least 25% but lacks the tree cover as specified above, then tree replacement pursuant to paragraph 8.3.1E, Replacement Tree Coverage, shall be required, except that:

- (1) No trees greater than two inches caliper shall be planted; and
- (2) A minimum of ten understory trees shall be provided per acre.

E. Specimen Trees Retained

Existing specimen trees, as defined in paragraph 8.3.5, Specimen Trees, located within a required project boundary buffer shall be retained; except where the removal of such trees is required to provide access to the property.

F. Buffer Width Modification

Buffer width shall normally be calculated as perpendicular to the property line, however, width modifications are allowed and shall be calculated based on the average width of the buffer per 100 feet or portion thereof.

1. In no case shall the minimum width of the buffer be less than one-half the required width.
2. The maximum width, for the purposes of installing required landscaping or receiving credit for existing vegetation, shall not be more than one and one-half times the required buffer width.

9.4.6 Off-Site Vegetation

- A. Existing plant material on adjacent property can be credited toward buffer requirements, provided that such material is in a permanently protected area such as a conservation easement or similarly preserved area.
- B. Plant material, either existing or proposed, on an adjacent property can be credited toward buffer requirements through use of a landscape easement.

9.4.7 Interactive Buffer Model

A. Alternative Buffers Permitted

To allow flexibility in buffer design, the interactive buffer model, maintained by the Planning Director or designee, can be used to create a buffer meeting or exceeding the opacity standards using a variety of widths, plant material, walls or berms under the following circumstances:

1. In the Downtown, Compact Neighborhood, and Urban Tiers, the interactive buffer model can be used; however, no alternative buffer shall be permitted to be less than one-half

the minimum width shown in the tables in paragraph 9.4.5C, Urban, Compact Neighborhood, and Downtown Tiers, above.

2. In the Rural and Suburban Tiers, the interactive buffer model shall not be used, except where the slope of the buffer exceeds 15%. Buffer width shall not be reduced through use of the model.

B. Settings of the Model

Settings for the interactive buffer model are maintained at the offices of the Planning Department. Model settings can be obtained upon request at the Planning Department during normal business hours.

9.4.8 Walls, Berms and Fences in Buffers

Where walls, berms or fences are built within any required project boundary buffer, they shall meet the following requirements.

A. Walls

1. Walls located within a buffer can be used to permit a reduction the buffer width pursuant to paragraph 9.4.5, Constructed Buffer.
2. All walls, when located within a buffer, shall have planted on the side facing the adjacent property with at least one upright shrub for every six feet of wall length. These shrubs can be counted towards meeting the opacity requirement for the buffer.
3. Where shrubs are planted adjacent to a wall, the minimum distance between the wall and the property line shall be four feet.
4. The applicant shall be required to demonstrate provision for access and maintenance of landscaping and the wall structure at the time of landscape plan approval.
5. Walls used within the CI District in lieu of a required buffer width shall be permitted, with the following provisions:
 - a. The wall shall have a height of eight feet; and
 - b. The wall is not within sight distance triangle(s).
6. Within the CI District and Design Districts, no project boundary buffer shall be required when the adjoining lot has a wall included as part of a required buffer, the wall is located within five feet of the property line, and a recorded easement exists for the wall and buffer.
7. Walls used within Design Districts in lieu of a required buffer width shall be permitted, with the following provisions:
 - a. The wall shall have a minimum height of six feet; and
 - b. The wall is not within sight distance triangle(s).
8. Walls shall comply with the height requirements pursuant to Sec. 9.9, Fences and Walls, except that walls located outside of areas that qualify as street frontage shall be a minimum height of six feet.

B. Berms

1. Berms located within a buffer can be used to permit a reduction in buffer width in the Suburban and Rural Tiers.
2. The minimum height shall be four feet.
3. Berms shall have side slopes of not less than three feet horizontal for each one foot vertical and a minimum crown width of two feet. Prior to issuance of the first certificate of compliance, berms shall be planted to ensure coverage by live plant material within five years.

C. Fences

1. No reduction in buffer width shall be provided based on the provision of a fence.
2. Fences shall be maintained in a structurally safe and attractive condition and with finished faces and plantings located towards the adjacent property with at least one upright shrub for every six linear feet of fence length.

9.4.9 Separate Parcels for Stormwater Management

Where a separate legal parcel is permitted for stormwater management, buffers consistent with those required for the remainder of the project shall be required, except that if the stormwater parcel adjoins a street or railroad right-of-way 50 feet or less in width, a buffer with a minimum opacity of 0.2 shall be required and planted in accordance with the Public Works Department's *Reference Guide for Development*.

9.4.10 Permitted Activity Within Project Boundary Buffers

- A. Vehicular and pedestrian passageways such as driveways, railroad right-of-way, and bicycle and pedestrian paths, and utilities can cross a project boundary buffer, provided they cross at a maximum of 15 degrees from perpendicular.
- B. Stormwater management facilities can be located in a buffer provided that an upland area that meets or exceeds the opacity requirements of paragraph 9.4.3, Standards, is provided.

Sec. 9.5 Mass Grading Buffers and Revegetation

9.5.1 Mass Grading Buffers

A. Applicability

1. Mass grading buffers shall only apply to activity within the City jurisdiction.
2. Mass grading, as defined in Sec. 16.3, in the Rural, Suburban and Urban Tiers where no other site improvements are proposed shall require perimeter mass grading buffers at all exterior lot lines pursuant to this section.
3. Buffers required by this section shall no longer be required upon approval of a site plan for other site improvements, although buffers may be required by other provisions of this article. If such a site plan or a final plat is approved, the required mass grading buffer shall be retained until a project boundary buffer pursuant to Sec. 9.4, Project Boundary Buffers, is installed. A preliminary plat does not relieve the applicant of the requirements of this paragraph.
4. A site plan for buildings, not just utilities, must be approved to be relieved of the requirements of this section.

B. Buffer Standards

1. General

No grading shall be allowed within mass grading buffers except to provide reasonable access and for utility installation. All crossings and intrusions into the mass grading buffer shall be at an angle between 75 and 105 degrees, with minimal disturbance to the buffer.

2. Adjoining Other Properties

- a. Perimeter mass grading buffers adjoining other properties (along exterior property lines), shall be a minimum of 65 feet in width if the adjoining property is developed, or 32 feet if the adjoining property is undeveloped, measured perpendicular to the boundary of the site, and shall be in place prior to such grading activity.
- b. Such buffers shall preserve existing vegetation.

3. Adjoining Public Rights-of-Way

- a. Mass grading buffers along public rights-of-way shall be at least 65 feet in width measured perpendicular to the boundary of the site and shall be in place prior to such grading activity.
- b. Such buffers shall preserve existing vegetation.

9.5.2 Exemption

Forestry activities conducted in conformance with a Forest Management Plan that uses the current best management practices set out in "North Carolina Forestry Best Management Practices Manual To Protect Water Quality," as amended, as adopted by the North Carolina Department of Agriculture and Consumer Services, shall not require a mass grading buffer; however, if required buffers are not provided consistent with the requirements of paragraph 8.3.4, Clear Cutting, development of the site shall be prohibited for a period of three or five years (in the City) or three years (in the County) from the date of forestry activities.

9.5.3 Revegetation

A. Applicability

1. An owner shall have two years from the date that a site plan is approved for land disturbing activity subject to this section where no other tract improvements are proposed either to secure site plan approval for development of the tract or to revegetate the site.
2. Revegetation required by this section shall not be required upon approval of a site plan for site improvements for that portion of the development tract with such improvements proposed. The remainder of the development tract shall continue to require revegetation until a site plan showing other site improvements is approved. A preliminary plat does not relieve the applicant of the requirements of this paragraph.
3. Revegetation is required only where land disturbing activity has taken place, and no site plan for improvements has been approved within two years.

B. Revegetation Standards

1. So long as the required mass grading buffers pursuant to this section have been provided and maintained, revegetation of a tract with a ground cover sufficient to restrain erosion shall satisfy the requirement for revegetation.
2. If the required mass grading buffers were not provided and maintained, revegetation of a tract shall create a biological community composed of a mixed and variable assemblage of native vegetation which is appropriate for the existing site conditions with at least three different species of trees native to Durham County and a tree density of at least 200 living trees per acre, with at least 50% of those trees having the potential of attaining a two and one-half inch or greater dbh within seven years.

Sec. 9.6 Street Trees

9.6.1 Applicability

- A.** All development shall be conducted in accordance with this section except that additions to existing residential buildings on single-family residential lots of record recorded prior to June 28, 1999, shall be exempt from the provisions of this section.
- B.** Residential development utilizing the RR District shall be exempt from the provisions of this section.

9.6.2 Required Street Trees

A. Street Trees in Districts other than SRP-C (County Only), CI or Design Districts

- 1.** Trees shall either be retained or planted such that there is an average of at least one street tree for every 40 feet of street frontage along the sides of all existing and proposed rights-of-way (except alleys), and private street easements.
- 2.** Street trees shall be located within 30 feet of the right-of-way or street easement and in a street yard unless:
 - a.** The City Public Works Director in consultation with the City Transportation Director or City Urban Forestry Division, as applicable, or the NCDOT, or designees, as appropriate, authorize their location in a right-of-way;
 - b.** If the trees are existing trees, the root protection zone outside of the right-of-way is protected; and
 - c.** There is no conflict with public utilities.
- 3.** If a conflict exists with public utilities, street trees shall be located in the required street yard.

- B.** The location of street trees can be varied, as long as the separation between each tree does not exceed 100 feet, measured between the centerline of each trunk. If existing obstructions, access points, or sight distance triangles prevent compliance with the maximum separation requirement, the separation can exceed the maximum only to the extent necessary to avoid the obstruction, access point, or sight distance triangle.

C. Street Trees in the SRP-C (County Only), CI District and Design Districts

- 1.** Street trees shall be required at a rate of one tree for every 40 feet of street frontage along existing and proposed rights-of-way (not including alleys) and private street easements.
- 2.** Street trees shall be located in the right-of-way or street easement unless the Public Works Director in consultation with the City Transportation Director or City Urban Forestry Division, as applicable, or NCDOT, as appropriate, requires an alternate location or requires the use of a Street Tree Alternative pursuant to paragraph 9.6.2D.3, below.
- 3. Alternative Street Tree Requirement**
 - a.** If the prescribed street tree location is in conflict with any public utility or traffic control device, an alternative can be provided in lieu of the street tree requirement.

- b. Where development incorporates existing buildings and the distance from the back-of-curb to the building face is less than 10 feet, an alternative can be provided in lieu of the street tree requirement.
- c. Street tree alternatives, when provided, shall comply with the standards in the table below:

Alternative	Standards	CI	Design Districts	SRP-C (County Only)
Public Art	Shall provide a minimum of 100 square feet of public art along the street frontage in-lieu of each required street tree	--	√	√
Green Screen or Wall	Shall be a minimum of 100 square feet along the street frontage in-lieu of each required street tree and shall be a minimum of 50% evergreen.	--	√	√
Awnings	Shall be a minimum of 10 linear feet along the street frontage in-lieu of each required street tree and shall be a minimum of 5 feet in depth and kept in good repair.	√	√	√
Landscape Planters	Shall provide a minimum of 2 landscape planters with a planting area of 5 square feet or greater in-lieu of each required street tree. Planters must be continually planted and maintained.	√	√	√

9.6.3 Credit for Existing Trees

- A. Developers can use existing trees to meet the requirements of this section, as long as existing trees are protected in accordance with the standards of paragraph 8.3.2, Protection of Existing Vegetation.
- B. Trees preserved to meet other requirements of this Ordinance can be used to meet the requirements of this section as well, provided they meet the minimum size and location requirements of this section.
- C. Trees located in a side yard behind the front building line or located behind any portion of a building cannot be used for credit.

9.6.4 Street Tree Installation

- A. Required street trees shall be clearly noted on any site plan, preliminary plat, or final plat.
- B. Street trees shall be at least two and one-half inch caliper, or as permitted within the *Landscape Manual* pursuant to paragraph 9.2.1, *Landscape Manual*.
- C. In the Suburban and Rural Tiers street trees shall not be located in, or within four feet of, any street right-of-way without prior approval from the City Public Works Director in consultation with the City Transportation Director or City Urban Forestry Division, as applicable, or the NCDOT, or designees, as appropriate.
- D. A contiguous growing area without encroachments shall be provided for each tree as specified in the *Landscape Manual*. Alternative systems to satisfy growing area

requirements, such as critical root path systems, can be utilized as specified within the *Landscape Manual*.

- E.** Planting location shall take into consideration any roadway widening identified on approved thoroughfare plans but not provided by the development.
- F.** Required street trees shall be planted before a Certificate of Compliance is issued, unless the planting has been postponed to the appropriate season in accordance with the requirements of paragraph 9.11.2, Extensions for All Other Development.
- G.** In the Core sub-district of Design Districts, a suspended sidewalk system over street tree planting pits shall be utilized to maximize useable sidewalk area.
- H.** (County Only) In the SRP-C District, a suspended sidewalk system over street tree planting pits can be utilized to maximize useable sidewalk area.

Sec. 9.7 Screening

9.7.1 Applicability

- A.** Features and uses listed below shall be screened when visible from adjacent properties, and from adjacent streets, pedestrian malls, and public trails.
 - 1.** Air handlers, and other similar electrical or mechanical equipment in multifamily or nonresidential development;
 - 2.** Class B outdoor storage;
 - 3.** Loading areas;
 - 4.** Solid waste facilities in multifamily or non-residential development, including dumpsters and recycling; and
 - 5.** Uses requiring screening pursuant to Sec. 5.3, Limited Use Standards.
- B.** The features and uses listed above need not be screened from similar features and uses on adjacent lots and within the I District, except where project boundary buffers would be required pursuant to Sec. 9.4, Project Boundary Buffers.
- C.** All rooftop equipment, except solar panels and wind turbines, shall be screened or set back so that it is not visible from ground level at any adjacent right-of-way.

9.7.2 Standards

- A.** The following is required screening material that can be used individually or in combination to provide year-round screening. Solid waste facilities shall only utilize options 1, 2, or 3 . Options 1, 2, and 3 may require additional screening per paragraph 9.7.2D, Screen Wall or Fence Visible Off-Site.
 - 1.** Solid walls constructed of material per paragraph 9.9.3, Walls;
 - 2.** Wood fences with a minimum opacity of 85%;
 - 3.** Metal panels with a minimum opacity of 85%;
 - 4.** Solid evergreen hedge per paragraph 9.7.2C, Evergreen Hedges;
 - 5.** Earth berm constructed pursuant to paragraph 9.4.8B, Berms; or
 - 6.** Wood fences or metal panels with an opacity of less than 85% augmented with upright evergreen shrubs planted four feet on center along the length of the screening.
- B. Height**
 - 1.** For screening of mechanical equipment and solid waste facilities, the screen height shall be the height of the equipment or facility plus six inches.
 - 2.** For all other screening purposes, the screen height shall be a minimum of eight feet.
- C. Evergreen Hedges**
 - 1.** For ground-level air-handlers and other mechanical equipment, plant material shall:
 - a.** Consist of upright shrubs at least 2/3 the height of the facility at the time of installation;

- b. Be planted two and one-half feet on center; and
 - c. Reach the required height within three years of planting.
- 2. For all other features to be screened, plant material shall:
 - a. Consist of 40 evergreen understory trees per 100 linear feet;
 - b. Be at least six feet tall at the time of installation; and
 - c. Reach a minimum height of eight feet within three years of planting.

D. Screen Walls or Fence Visible Off-Site

One upright shrub of an evergreen species shall be installed per four linear feet of any screen wall or fence that is visible off-site. This shall not apply to screening around roof-top equipment, if option 6 is used per paragraph 9.7.2A, or for sites within the CI District or Design Districts.

9.7.3 Credit for Other Landscaping

Plant material in project boundary buffers can be counted towards the requirements of this section when located to serve both functions.

9.7.4 Alternative for Air Handlers and Other Electrical or Mechanical Equipment

Alternative treatments to minimize the visual impact of ground level or roof-top air handlers and other electrical or mechanical equipment, instead of screening, can be approved through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit, or a certificate of appropriateness pursuant to Sec. 3.17, Certificate of Appropriateness, as applicable.

Sec. 9.8 Vehicular Use Area Landscaping

9.8.1 General

A. Defined

For the purposes of this section, areas used for vehicle service, parking (including structured parking), parking lot drive aisles, and business transactions such as areas adjacent to gasoline pumps (even if under a canopy) and areas for drive-up service, shall be considered vehicular use. Driveways that are perpendicular or nearly perpendicular to the street and serve as an entrance to the site shall not be considered vehicular use areas for purposes of this section.

B. Applicability

The following areas shall meet the requirements of this section.

1. Any new off-street parking area containing four or more spaces, or vehicular use area of 1,500 square feet or more (except for parking associated with single-family or two-family development on single lots).
2. Any expansion of an existing off-street vehicular use area consistent with the dimensions identified above.
3. Sites where a building is torn down and reconstructed, regardless of whether or not the new building is larger than the original building if the vehicular use area associated with the new building meets the standards listed above.
4. Only the regulations in paragraph 9.8.4, Vehicular Use Area Landscaping in Design Districts, shall apply to vehicular use areas in Design Districts. (County Only) These standards shall also apply to the SRP-C District in lieu of paragraph C, Standards, below.

C. Standards

1. Location from Edge of Vehicular Use Area

- a. No canopy trees used for vehicular use area landscaping credits shall be planted farther than 10 feet from the edge of the vehicular use area.
 - b. No understory trees or shrubs shall be planted farther than 15 feet from the edge of the vehicular use area.
 - c. When existing utilities or easements prohibit the placement of trees or shrubs as required above, the placement of the plant material shall be set back the minimum amount necessary to be clear of the utility or easement and to provide the minimum required growing area for the plant material.
 - d. All shrubs and trees shall be located at least three feet from either the back of curb of the vehicular use area or back of wheel stops.
2. Plant materials shall be located to facilitate safe sight distances within parking lots. Plants located at the end of parking lot islands, within the sight distance triangles, or in medians shall be a species with a maximum mature height of 30 inches.
 3. Tree planting and site lighting shall be separated by a minimum of 10 feet to reduce conflicts between mature trees and light standards.

4. Unless specifically stated otherwise, all canopy trees used for vehicular use area landscaping shall be 2 ½ inch caliper at the time of installation.
5. A contiguous growing area not encroached upon by impervious pavement shall be provided for each tree as specified within the *Landscape Manual*. Sidewalks shall be permitted to encroach for sites within the Urban, Compact Neighborhood, and Downtown Tiers when a critical root path system is implemented pursuant to the *Landscape Manual*.
6. Unless specifically stated otherwise, shrubs shall be installed at a minimum height of 15 inches, and shall be of a species expected to reach a minimum height of 30 inches and a minimum spread of 30 inches within five years of planting. Shrubs planted within sight distance triangles shall have a maximum mature height of 30 inches.
7. At least 60% of required shrubs shall be evergreen.

9.8.2 Vehicular Use Area Perimeter Landscaping

A. Vehicular Use Areas Visible From Streets

1. Applicability

Any vehicular use area subject to this section that has exposure to a public or private street (except an alley), and is located within 50 feet of a right-of-way or access easement shall provide a landscaped area, adjacent to and outside of the street right-of-way or access easement, equal to six square feet for each linear foot of street frontage, less driveways, which may cross required landscape areas if constructed at angles perpendicular or nearly perpendicular to property lines.

2. Standards

- a. Any landscaped area used for credit shall be a minimum of three feet and a maximum of 30 feet in width in all Tiers except Compact Neighborhood, where the maximum width shall be 10 feet.
- b. **Canopy Trees**
 - (1) Canopy trees (except under overhead power lines, where understory trees shall be used) shall be planted at the rate of one tree per 40 linear feet of vehicular use area along the street, less driveway widths.
 - (2) Areas with canopy trees shall be at least 10 feet deep from right-of-way to back of curb or pavement edge.
 - (3) Project boundary buffer canopy trees pursuant to Sec. 9.4, Project Boundary Buffers, (to the extent such trees are located to serve the function of this section) and street trees pursuant to Sec. 9.6, Street Trees, may be credited for purposes of this section.
- c. **Shrubs**
 - (1) Shrubs shall be planted at the rate of one shrub per three linear feet of property line abutting public streets less driveways.
 - (2) A wall consistent with the requirements of Sec. 9.9, Fences and Walls, and at least 30 inches tall may be substituted for the required shrubs.

B. Vehicular Use Areas Visible from Adjacent Property

1. Applicability

Any vehicular use area subject to this section on projects not required to provide a project boundary buffer pursuant to Sec. 9.4, Project Boundary Buffers, shall provide a landscaped area between the edges of the pavement and the perimeter property lines not required to provide landscaping pursuant to paragraph A, Vehicle Use Areas Visible from Streets, unless the property lines fall within a vehicular use area in common use.

2. Standards

- a.** The minimum landscaped area shall be large enough to accommodate the plant materials required in paragraph 9.8.2B.2.b below, but shall not be less than six square feet per linear foot of vehicular use area edge facing off site, unless wheel stops are provided, in which case the minimum area can be reduced to four square feet.
- b.** Required landscaping shall consist of the following materials:
 - (1) Evergreen or deciduous canopy trees, at the rate of one per 25 linear feet of vehicular use area, to be planted within an area with a minimum dimension of 10 feet in the vicinity of the tree.
 - (2) Understory trees, at the rate of one per 18 feet, with a contiguous growing area of 125 square feet and a minimum dimension of seven and one half feet.
 - (3) Evergreen shrubs, at the rate of one per four linear feet of required planting area.
- c.** When adjoining properties are already developed with parking lots adjacent to the proposed site and have landscaping installed to satisfy the requirements of this section only, 50% of the required plant materials shall be required.

9.8.3 Landscaping within Vehicular Use Areas

A. Applicability

- 1.** Development with vehicular use areas exceeding 3,000 square feet (including accessory drives and aisles but excluding areas under canopies and within structured parking) shall provide and maintain landscaped areas based upon the surfaced vehicular use area.

B. Standards

1. General

- a.** Areas used for landscaping shall be provided in the amount equivalent to at least 15% of the vehicular use area, and shall be used for planting trees and shrubs according to the standards below.
- b.** Minimum curb radii of three feet shall be required on the corners of all tree islands and medians to allow for free movement of motor vehicles around planting materials. All islands or medians shall have raised edging or other devices (such as wheel stops) around them to protect plants from being damaged by motor vehicles.

2. Trees

- a. Tree planting areas shall be located such that no portion of a parking space is farther than 50 feet from a canopy tree trunk.
- b. Trees shall be planted at a rate of one two-inch caliper canopy tree per 2,000 square feet of vehicular use area.
- c. Landscaped areas surrounded by impervious surfaces shall have a minimum width of 10 feet when they include canopy or understory trees, and shall contain at least 200 square feet of growing area per tree, unless a larger growing area per tree is specified in the *Landscape Manual*.

3. Shrubs

One shrub shall be required per 250 square feet of vehicular use area.

C. Maintenance

All canopy trees located within vehicular use areas shall be limbed up to a height of six feet to allow for clear views under them.

9.8.4 Vehicular Use Area Landscaping in the SRP-C District (County Only), CI District and Design Districts

A. Applicability

1. This section applies to any vehicular use area located in the SRP-C District (County Only), CI District and Design Districts that is not located within a parking structure, including parking lots where no building permit is required.
2. For parking structures the architectural standards set forth in paragraph 6.12.2D.6, Parking Structure Frontage Type, shall apply. No vehicular use area landscaping shall be required.

B. Standards

1. General

a. Vehicular Use Area Perimeter Landscaping

A landscaped area equal to six square feet for each linear foot of street frontage shall be provided adjacent to and outside of the right-of-way. This area shall be provided along the entire street frontage, less driveways, and shall have a minimum depth of three feet and a maximum depth of 10 feet.

b. Landscaping within Vehicular Use Areas

- (1) Vehicular use areas completely internal to the block and not adjacent to a street shall be exempt from providing internal landscaping, except as stated in paragraph 9.8.4B.1.b(3) below.
- (2) The provision of paragraph 9.8.4B.1.b(1) above shall not apply to projects in the SRP-C District (County Only), CI District and the CD District where the vehicular use area is greater than 10,000 square feet or 40 parking spaces, whichever is smaller, but shall instead meet the following standards:
 - (a) Such parking areas shall be required to meet the standards of paragraph 9.8.3, Landscaping within Vehicular Use Areas.

- (b) Such parking areas shall provide a pedestrian path at least four feet wide, unobstructed and clear of vehicle overhang, paved with unit pavers or a monolithic surface, and which shall connect the parking area to the sidewalk or building.
- (3) Surface parking areas with 65 feet of street frontage or greater shall be required to meet the standards of paragraph 9.8.3, Landscaping within Vehicular Use Areas.

2. Plant Materials

- a. Canopy trees shall be planted at a rate of one tree per 30 linear feet of vehicular use area street frontage. Street trees may be used to meet this requirement.
- b. Shrubs shall be required at a rate of one per four linear feet of required landscape area.

3. Amenities

Streetscape amenities in the Design Districts may be located in the vehicular use area landscaping area, adjacent to the street.

Sec. 9.9 Fences and Walls

9.9.1 Height

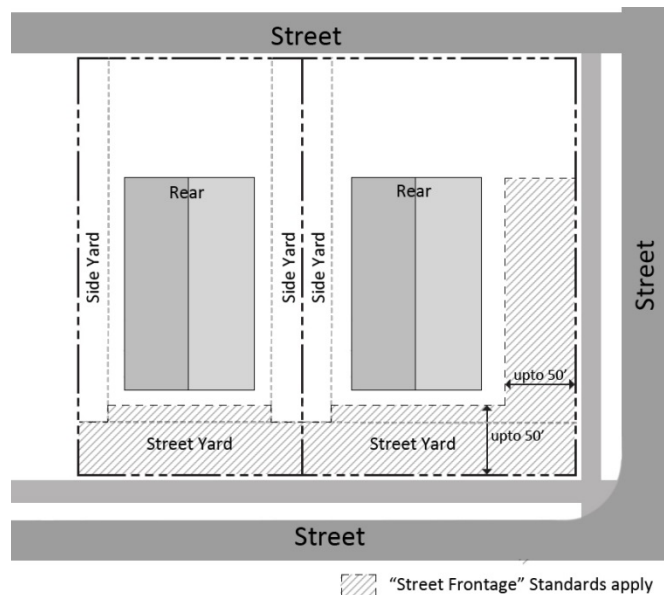
A. The maximum height of a fence or wall shall be as shown in the table below, unless:

1. A higher fence or wall is allowed by other provisions of this Ordinance; or
2. The fence is associated with a recreational facility, such as a tennis court; or
3. The fence is associated with an electrical substation; or
4. As required by the state or federal government.

Fence or Wall Location	Maximum Height, in Feet	
	Rural	Other Tiers
Street Frontage*		
By Right, Non-Electric	8	4
With a Minor Special Use Permit:		
Non-Electric	-	8
Electric	10	10
No Street Frontage		
By Right, Non-Electric	8	8
By Right, Electric	10	10

B. Fences or walls located between the structure and the street, and located up to 50 feet from the right-of-way, shall use the “street frontage” standards, except for the following which shall utilize the “no street frontage” standards:

1. Fences or walls located to the rear of a primary structure.
2. Fences or walls that are non-electric and are located along a side yard located beyond the minimum or maximum street yard, as applicable.



- C. Posts, columns, or other similar vertical fence or wall supports, including lighting and ornamentation on top of supports, shall be exempt from height requirements. To maintain the exemption, material shall not span from one support to another above the maximum height allowed.
- D. Where a minor special use permit is required as indicated in the table found within paragraph 9.9.1A, the following findings shall be made in addition to those required in paragraphs 3.9.8, Criteria for Approval of Major and Minor Special Use Permits:
 1. That the fence or wall does not impede the natural light from reaching the subject or surrounding properties to their detriment;
 2. That normal circulation of air is not unreasonably impeded by the fence or wall for the subject or surrounding properties;
 3. That the fence or wall will not hinder access to the subject or surrounding properties for emergency services;
 4. That the fence or wall shall be reasonably compatible with the surrounding properties in that it will not adversely affect property values; and
 5. That vision clearances for pedestrian and vehicular traffic will not be impeded.

Conditions may be specified to protect the welfare of the neighborhood and adjacent properties.

E. Exception to Requirement of a Minor Special Use Permit

When a certificate of appropriateness (COA) is required for a fence or wall, a minor special use permit is not required.

- F. Sight distance triangles shall be maintained pursuant to paragraph 12.3.1D, Sight Triangles.

9.9.2 Fences

- A. A finished side of all fences shall face off site. If support posts are located or visible on one side only, that side shall be deemed the unfinished side.
- B. Razor wire, concertina wire, barbed wire, and similar fencing materials shall be prohibited as follows:
1. In all residential districts and in sites adjacent to residential uses, except in the Rural Tier; and
 2. In the SRP-C District (County Only), all Design districts and the CI District.
 3. Exception: Barbed wire is allowed where associated with a major or minor utility.
- C. Uncoated chain link fencing shall not be permitted within the CI District.
- D. **Electric Fences**
1. **Exemption**
Underground electric fences shall be exempt from the requirements of this section.
 2. **Uses and Locations**
 - a. Electric fences shall be allowed in conjunction with following uses:
 - (1) Government facilities in paragraph 5.2.4D, Government Facilities;
 - (2) Utilities in paragraph 5.2.4J, Utilities; and
 - (3) Industrial uses in paragraph 5.2.7, Industrial Use Categories.
 - b. Electric fences are not permitted within Design Districts.
 - c. A minor special use permit is required for electric fences located within “street frontage” as referenced in the table in paragraph 9.9.1A.
 - d. An electric fence shall be allowed in conjunction with a use or location not otherwise authorized by this section if it is required by the U.S. Department of Homeland Security.
 3. **General Standards**
 - a. Electric fences shall only be battery-powered with a maximum 12-volt direct current.
 - b. The electric charge produced by an electric fence upon contact shall not exceed energizer characteristics set forth in paragraph 22.108 and depicted in Figure 102 of International Electro Technical Commission (IEC) Standard No. 60335-2-76, latest edition.
 - c. Electric fence cabling and wires shall not be connected to an overhead power line post.
 - d. An electric fence shall not interfere with overhead utility lines or the maintenance of those lines.

- e. An electric fence shall not interfere with the transmission of power, telephone, radio, television, or data.
- f. The electric fence system shall contain a cut-off switch capable of disconnecting the electric fence in its totality from all energizers. Such switch shall be clearly marked and easily observable and accessible from a primary path of entry for emergency and enforcement personnel.
- g. Warning signs shall be installed.

4. Perimeter Wall or Fence

a. General

- (1) A perimeter fence or wall shall be required.
- (2) An electric fence shall be completely interior to the perimeter non-electric fence or wall.
- (3) When the adjacent property is a residential district or use, the perimeter fence or wall visible from that property shall be either:
 - i. A minimum 80% opaque; or
 - ii. Located behind an evergreen hedge that achieves a minimum height of six (6) feet and 80% opacity within three (3) years of planting; or
 - iii. Located behind an existing or proposed project boundary buffer.
- (4) The lowest portion of a perimeter fence or wall shall be constructed so that no space exists between the ground and the fence or wall.

b. Spacing

- (1) An electric fence shall be separated from the perimeter fence or wall, except at gate openings, by either four (4) to eight (8) inches or more than three (3) feet.
- (2) Except at gates, no part of a perimeter fence or wall shall contact the electric fence.
- (3) The area between the electric fence and perimeter fence or wall shall be unobstructed.

c. Height

An electric fence shall be at least two (2) feet taller than the perimeter fence or wall.

9.9.3 Walls

- A. Walls shall be constructed of one or a combination of the following materials: stucco over concrete block, exposed aggregate concrete, brick, stone, or architectural block in a structurally safe and attractive condition. Alternative walls may be permitted with the approval of the Planning Director, or designee, if such alternative walls provide a similar level of opacity to that of the listed materials and are in keeping with the architecture of the development. No walls of exposed, plain or painted-only concrete cinder block shall be permitted.
- B. No wall shall be located within any required drainage, utility or similar easement.

- C. Pedestrian connections through walls that connect to adjacent neighborhoods or other uses shall be encouraged. In addition, barbed wire can be used for additional protection of electrical substation in conjunction with other fencing materials in any residential district.

9.9.4 Retaining Walls

- A. Retaining walls can be located within required yards.
- B. Retaining walls built to support a grade eight feet or more higher than the grade at the interior edge of the project boundary buffer shall also be set back 10 feet from the buffer.

9.9.5 Design District Additional Standards

- A. Fences and walls shall incorporate materials, elements, or details of the architecture.
- B. Retaining walls over four feet high shall be terraced when located along the street frontage or within the street yard.
- C. Fences and walls shall incorporate changes in plane, height, texture, material, finish, or significant landscape massing to minimize visual monotony.

Commentary: Interest and variety can be provided through the use of offsets, pilasters, columns, and insets, as well as through the artful combination of architectural materials.

- D. Uncoated chain link fences (with or without any type of inserts) shall not be permitted. Coated chain link fencing shall only be permitted for use at recreational facilities.

Sec. 9.10 Installation and Maintenance

9.10.1 Responsibility

Unless otherwise stated, the owner of any property where landscaping or buffering is required shall be responsible for the maintenance of all required plant material (including street trees located off-site), fences and walls. Maintenance responsibilities shall include the clearing and replacement of required material that is dead and/or dying.

9.10.2 Pruning

A. General

Trees and shrubs shall be kept trimmed back from doors, windows, and walkways.

B. Standards

Necessary pruning and trimming shall be in accordance with the American National Standards for Tree Care Operations: Tree Shrub and Other Woody Plant Maintenance – Standards Practices (Pruning), and shall not be interpreted to include topping of trees through removal of crown material or the central leader, or any other similarly severe procedures such as lollipopping, meatballing, or hatracking that cause irreparable harm to the natural form of the tree, except where such procedures are necessary to maintain public overhead utilities. Any such activity shall be a violation of this Ordinance and additional plant material may be required by the Planning Director or designee to replace or supplement the damaged plant material.

Sec. 9.11 Extensions

9.11.1 General Request for Extension of Compliance

It is recognized that land development occurs continuously and that vegetation used in landscaping or screening should be planted at certain times to ensure the best chance of survival.

9.11.2 Extensions for All Other Development

- A.** In order to ensure compliance and to reduce the potential expense of replacing landscaping or screening materials which were installed at an inappropriate time or under unfavorable conditions, a letter of request for extension of compliance with landscaping requirements can be filed with the Planning Director, or designee, which states the reasons why the request is being made. This letter shall acknowledge that the applicant is aware of all landscaping and screening requirements, and will comply with those requirements within 90 days, or discontinue use of the property.
- B.** The Planning Director, or designee, shall grant the extension on requests for planting extensions for single-family development submitted between May 15 and September 15 of each year and may grant the extensions for other uses and at other times if there are unfavorable conditions for planting.
- C.** If the initial letter of request for extension of compliance with landscaping requirements has expired and conditions are still deemed unsuitable for planting, an applicant can request one additional extension of up to 90 days. During periods of extreme drought, as evidenced by the official declaration of Stage 3 or greater mandatory water conservation requirements, the Planning Director, or designee, may authorize additional 90-day extensions beyond the one extension typically allowed. These extensions may be continued throughout the period in which the extreme drought conditions remain.
- D.** The applicant shall also acknowledge that while a Conditional Certificate of Compliance may be issued, no Final Certificate of Compliance shall be issued while there is an active (pending) letter of request for extension of compliance with landscaping requirements unless a performance guarantee (such as a letter of credit or performance bond) sufficient to cover 150% of the installed landscaping costs has been posted with the Inspections or Planning Department.

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Article 10 | Parking and Loading

Sec. 10.1 Purpose

The purpose of this section is to reduce hazards to public safety and ensure efficient traffic flow by establishing standards for motorized vehicle parking, for bicycle parking, and for loading areas.

Sec. 10.2 General Requirements

10.2.1 Applicability

The parking standards of this Article shall apply to all proposed development.

10.2.2 Facilities Required

- A.** Parking facilities for motorized vehicles and bicycles shall be provided for all uses located outside of the Downtown Tier.

B. Required Park and Ride Parking Spaces

Commercial and office developments which provide 400 or more parking spaces shall designate at least 5% of the required spaces as “Park and Ride” spaces. The following shall also apply.

1. No more than 100 spaces shall be required.
2. A sign or signs shall be used to designate that the spaces are reserved for park and ride use during non-holiday weekdays between 6 a.m and 6 p.m.
3. Bus shelters shall be required if the transit stop is within ¼-mile of the Park and Ride area unless the applicable public transit provider indicates in writing to the Planning Director that a shelter is not required.

10.2.3 Vehicle Parking Permitted in Residential Districts and Uses

- A.** Other than townhouses and apartments, residential uses shall only utilize designated driveways within any yard area between the primary structure and the street for parking. Driveways shall be surfaced with an all-weather material with edges clearly delineated and, within the area between the primary structure and the street, shall not exceed 25 feet in width unless wider driveways are shown on an approved site plan or plot plan. Except for driveways, no additional curb cuts or vehicle access points shall be permitted. Parked vehicles shall not block pedestrian walkways.
- B.** Except as specified below, vehicles parked in residential areas shall not exceed 35 feet in overall length, eight feet in width or 12 feet in height.
- C.** Parking of buses on the site of and directly associated with an allowed nonresidential use in a residential district shall be allowed.
- D.** Domestic and recreational vehicles such as boats, camper trailers, and utility trailers shall be stored off the street and shall not be located in street and side yards. Multifamily developments may designate a specific area on a site plan for boat and trailer parking for residents of the development.
- E.** Except as permitted in paragraph 5.4.4, Home Occupations, parking of heavy equipment or tractor trailers shall not be allowed. This requirement shall not prohibit commercial vehicles from making deliveries in a residential district.

10.2.4 Use of Nonresidential Parking Spaces

- A.** Required parking spaces shall not be used for the storage or sale of merchandise, vehicle storage, vehicles for sale, or vehicle repair. Non-required spaces proposed for these uses shall be designated on a site plan.

- B. Any area designated for required off-street parking shall not be changed to another use until other parking facilities in conformance with this section are established elsewhere to serve the site.

10.2.5 Calculation of Spaces

- A. In residential districts in which garage space is shown on the plan, the garage space can be considered in determining whether required parking has been met.
- B. Requirements for the number of parking spaces for motorized vehicles and bicycles for each use are listed elsewhere in this section. The requirements may result in the calculation of a fractional parking space.
 - 1. If the fraction is less than 0.5, the fraction shall be deleted. If the fraction is 0.5 or greater, the fraction shall count as one parking space.
 - 2. If the calculation results in a number less than two, then the minimum requirement shall be two spaces, unless:
 - a. The parking is in addition to existing parking areas; or
 - b. A different minimum requirement is specified.

Sec. 10.3 Required Parking

10.3.1 Required Motorized Vehicle and Bicycle Parking

A. Parking Rates

1. Rates for off-street motor vehicle and bicycle parking spaces are provided for all uses listed below.
2. Uses not listed shall be reviewed by the Planning Director, or designee, for the appropriate parking rate classification, pursuant to Section 3.1, Interpretation of this Ordinance.
3. Buildings with multiple primary uses shall calculate parking based on the standard for each use in the building, but bicycle parking shall in any case meet the highest minimum standard for the uses.
4. **Parking Rate Table**

Use Category	Specific Use	Motor Vehicle (MV) Spaces	Minimum Bicycle Parking, except in the Downtown and Compact Neighborhood Tiers
AGRICULTURAL USES			
Agriculture	All agriculture	1 acre or less: None; Greater than an acre: 1 per site + 1 per 1,000 SF enclosed floor area	No spaces required
RESIDENTIAL USES			
Household Living	All household living ¹	2 per unit	Multifamily (except townhomes): 1 per 10 units
Group Living	All group living, except as listed below	1 per 4 beds	Dormitories: 1 per 10 beds
	Boarding house, rooming house	1 per bedroom	1 per 3 bedrooms
	Congregate living facility	1 per 2 units + 1 per 4 employees	1 per 20 employees, minimum 2 spaces
	Independent Living Facility	0.6 per unit	1 per 20 units, minimum 4 spaces
PUBLIC AND CIVIC USES			
Community Service	All community service	1 per 500 SF floor area	1 per 5,000 SF floor area, minimum 2 spaces
	Auditoriums	1 per 200 SF floor area available for seating in places of assembly, minimum 20 spaces	1 per 2,000 SF floor area available for seating in places of assembly, minimum 2 spaces
	Clubs and lodges	1 per 100 SF floor area	1 per 5,000 SF floor area
	Museums	1 per 300 SF floor area, minimum 10 spaces	1 per 3,000 SF floor area, minimum 2 spaces
Day Care	All day care	1 per employee + 1 per each 10 attendees	2% of required MV parking
Educational Facilities	All educational facilities, except as listed below	6 per classroom + 1 per 300 SF floor area of administrative office space	1 per classroom
	Elementary (inclusive of pre-k and preschool programs), middle school	1 per classroom + 1 per 300 SF floor area of administrative office space	1 per classroom
	College or University	1.25 per dorm room + 1 per classroom + 1 per 300SF of administrative office space	20% of provided motor vehicle parking

Use Category	Specific Use	Motor Vehicle (MV) Spaces	Minimum Bicycle Parking, except in the Downtown and Compact Neighborhood Tiers
	Distance Learning Facility	1 per 300 SF floor area	1 per 5,000 SF floor area, minimum 4 spaces
Government Facilities	City, county, state or federal government office	1 per 300 SF floor area + 1 per 3 employees	1 per 3,000 SF floor area + 1 per 30 employees, minimum 4 spaces
	Correctional facilities, jail, prison	1 per 300 SF office area + 1 per 5 beds	1 per 5,000 SF office area, minimum 4 spaces
	Emergency services, fire, sheriff or medical station	1 per employee per shift + 1 per facility vehicle	1 per 8 employees per shift
Medical Facilities	All medical facilities, except as listed below	1 per 250 SF floor area	1 per 5,000 SF floor area, minimum 2 spaces
	Medical laboratory	1 per 500 SF floor area	1 per 10,000 SF floor area, minimum 2 spaces
	Hospital	1 per 2 beds + 1 per doctor and nurse + 1 per 4 employees	1 per 20 employees
Parks and Open Areas	All parks and open areas except as listed below	See Indoor Recreation or Outdoor Recreation, as applicable	20% of provided motor vehicle parking, minimum 4 spaces
	Court, Basketball	4 per court	20% of provided motor vehicle parking, minimum 4 spaces
	Court, Tennis	3 per court	20% of provided motor vehicle parking, minimum 4 spaces
	Dog park	1 per 1,000 SF	None required
	Field, Baseball or softball	20 per field	20% of provided motor vehicle parking, minimum 4 spaces
	Field, Football or soccer	30 per field	20% of provided motor vehicle parking, minimum 4 spaces
	Picnic shelter	1 per table	20% of provided motor vehicle parking, minimum 4 spaces
	Playground	1 per 1,000 SF	20% of provided motor vehicle parking, minimum 4 spaces
	Pool, Indoor	20 per pool	20% of provided motor vehicle parking, minimum 4 spaces
	Pool, Outdoor	10 per pool	20% of provided motor vehicle parking, minimum 4 spaces
	Recreation center	1 per 300 SF floor area	20% of provided motor vehicle parking, minimum 4 spaces
	Trail head	1 per 1,000 linear feet of trail	20% of provided motor vehicle parking, minimum 4 spaces
	Cemetery, mausoleum columbaria, memorial garden	1 per 5 seats in the chapel or assembly area	No spaces required
Passenger Terminals	All passenger terminals	1 per 200 SF waiting floor area + 1 per 2 employees	10% of required MV parking. Minimum 8 spaces. Parking must be covered.
Places of Worship	All places of worship	1 per 28 SF available for seating in the assembly area(s)	5% of provided motor vehicle parking
Social Service Institutions	All social service institutions, except as listed below	1 per 1,500 SF floor area + 1 per employee/volunteer	1 per 5,000 SF floor area, minimum 2 spaces
Utilities	All utilities, except as listed below	1 per 1,000 SF enclosed floor area	2 spaces, where motor vehicle parking is required
	TV/HDTV/AM/FM broadcast facility	1 per 300 SF enclosed floor area	1 per 10,000 SF enclosed floor area
COMMERCIAL USES			
Indoor Recreation	All indoor recreation, except as listed below	1 per 250 SF enclosed floor area	1 per 2,500 SF enclosed floor area, minimum 2 spaces

Sec. 10.3 Required Parking

Use Category	Specific Use	Motor Vehicle (MV) Spaces	Minimum Bicycle Parking, except in the Downtown and Compact Neighborhood Tiers
	Adult establishment, electronic gaming operation, bar, nightclub, movie or theater	1 per 100 SF of floor area	Movie or Theatre: 1 per 1,000 SF of seating area Others: 1 per 2,000 SF floor area , minimum 2 spaces
Outdoor Recreation	All outdoor recreation, except as listed below	1 per 500 SF of enclosed floor area + 1 per 1,000 SF of outdoor use area	10% of required motor vehicle parking, minimum 4 spaces
	Campground, summer camp	1 per campsite + 1 per employee	5% of required MV parking
	Circus ground	1 per 600 SF of the area devoted to the circus, arcade, concessions, etc.	2% of required MV parking
	Clubhouse and/or pool accessory to a residential development	Design Districts: None All other applicable districts: 1 per 100 SF of pool area or clubhouse area, whichever is greater	Design Districts: None All other applicable districts: 10% of required motor vehicle parking, minimum 4 spaces
	Firing range, outdoor such as rifle range, archery, skeet, handgun	Min 5 + 1 per firing position	No spaces required
	Golf course, country club (see "restaurants" for additional parking requirements associated with eating facilities)	4 per hole + 1 per 500 SF floor area	5% of required MV parking
	Stadium or arena, commercial amphitheater, ballfield	1 per 4 seats	1 per 30 seats, minimum 4 spaces, maximum 50 spaces.
Overnight Accommodations	All overnight accommodations, except as listed below	1.25 per room + 1 per 100 SF conference/banquet/restaurant	1 per 15 rooms + 1 per 2,000 SF conference/banquet/restaurant
	Bed and breakfast establishment	1 per guest room + 2 per owner/manager	No spaces required
	Diet house, emergency shelter	1 per 250 SF floor area	1 per 2,500 SF floor area
Restaurants	All restaurants, except as listed below	1 per 100 SF	1 per 2,000 SF floor area, minimum 2 spaces
Retail Sales and Service	All retail sales and service, except as listed below	1 per 200 SF floor area for the first 50,000 SF of Gross Leaseable Area and 1 per 250 SF of leaseable area after that	1 per 5,000 SF floor area, minimum 4 spaces
	Animal hospital, kennel, or veterinarian	1 per 250 SF enclosed floor area	1 per 10,000 SF floor area, minimum 2 spaces
	Artist gallery, bulk mailing service, psychic, medium, security service, studio, taxidermist	1 per 400 SF floor area	1 per 10,000 SF floor area, minimum 2 spaces Security service, taxidermist: No spaces required
	For developments with more than one business: Storage used as general storage for the facility	1 per 1,000 SF floor area	No spaces required
	Outdoor market	1 per 300 SF vendor area	5% of required MV parking
	Repair-oriented services such as appliance, bicycle, canvas product, clock, computer, gun, jewelry, musical instrument, office equipment, radio, shoe, television or watch repair, locksmith, tailor, milliner, upholsterer	1 per 500 SF floor area	1 per 10,000 SF floor area, minimum 2 spaces
Self-Service Storage	All self-service storage	Min. 5 or 1 per 100 storage units, whichever is greater	Min. 2 or 1 per 750 storage units, whichever is greater
Vehicle Sales and Service	All vehicle sales and service, except as listed below	3 per service bay	1 per 20 employees, minimum 2 spaces

Use Category	Specific Use	Motor Vehicle (MV) Spaces	Minimum Bicycle Parking, except in the Downtown and Compact Neighborhood Tiers
	Car wash	2 per wash bay	1 per 20 employees, minimum 2 spaces
	Vehicle sales, leasing or rental; manufactured housing sales	1 per 500 SF enclosed floor area	1 per 20 employees, minimum 2 spaces
OFFICE USES			
Office	All office uses, except as listed below	1 per 250 SF floor area	1 per 5,000 SF floor area, minimum 2 spaces
	Conference center, retreat house	1 per 250 SF seating area	1 per 5,000 SF seating area, minimum 2
INDUSTRIAL USES			
Heavy Industrial	All heavy industrial	1 per 1,000 SF enclosed floor area	2 spaces required
	Wrecking, junk or salvage yard	1 + 1 per 10,000 SF of yard area	2% of required MV parking
Light Industrial Service	All light industrial service, except as listed below	1 per 1,000 SF floor area	1 per 20,000 SF floor area, minimum 2
	Research and Development	1 per 250 SF floor area of office space + 1 per 1,000 SF floor area of laboratory + 1 per 5,000 SF floor area for greenhouses and other material or mechanical storage areas	1 per 5,000 SF office floor area, minimum 2 spaces + 1 per 20,000 SF floor area non-office, minimum 2 spaces
Resource Extraction	All resource extraction	1 per 2 employees, minimum 3	2 spaces required
Warehouse and Freight Movement	All warehouse and freight movement	1 per 5,000 SF of floor area	2% of required MV parking, minimum 2 spaces
Waste-Related Service	All waste-related services	1 per 500 SF enclosed floor area + 1 per 5,000 SF outside storage area	2 spaces required
Wholesale Trades	All wholesale trade	1 per 1,000 SF floor area	1 per 20,000 SF floor area, minimum 2 spaces

¹For Compact Neighborhood Tier, see paragraph 10.3.1B.7.

B. Required Parking

- The amount of motor vehicle parking shall be a percent of the amount indicated in paragraph 10.3.1A.4, Parking Rate Table. The minimum and maximum parking rates are as follows. For fractions, refer to paragraph 10.2.5, Calculation of Spaces.

Location	Minimum	Maximum
Downtown Tier	None	100%
Compact Neighborhood Tier¹, CI District	80%	100%
Urban Tier	90%	175%
Suburban and Rural Tiers	100%	175%

¹For all household living within the Compact Neighborhood Tier, see paragraph 10.3.1B.7.

Example: The parking schedule is a baseline calculator for the amount of motor vehicle parking for a particular use or uses, subject to the location minimum and maximum requirements of the tier. For example, if a use, per the parking table, generates a rate of 100 spaces, the amount of parking permitted is as follows:

Downtown: Minimum-none; maximum - 100 spaces

Compact Neighborhood or CI District: Minimum - 80 spaces; maximum - 100 spaces

Urban: Minimum - 90 spaces; maximum - 175 spaces

Suburban and Rural: Minimum - 100 spaces; Maximum - 175 spaces

2. Bicycle parking rates for the SRP-C District (County Only), Compact Neighborhood and Downtown Tiers shall be pursuant to paragraph 10.3.3, Bicycle Parking in the SRP-C District (County Only), Downtown and Compact Neighborhood Tiers.
3. The amount of required parking for colleges or universities within the UC or UC-2 districts shall be determined pursuant to paragraph 6.11.4I, Parking.
4. Unless a use is a college or university, passenger terminal, within the SRP-C District (County Only), or located in the Downtown or Compact Neighborhood Tiers, the maximum number of required bicycle parking spaces shall be 100.
5. For the North RTP and Triangle Metro Center Compact Neighborhood Tiers: Uses located in these areas approved prior to January 1, 2006, can utilize the minimum and maximum parking rates established for the Suburban Tier until such time as regional mass transit is available in the applicable tier area.
6. Any change of use within an existing building in the Pedestrian Business sub-district of a CD District, or within a CI District, shall not be required to provide additional parking spaces. New buildings or expansion areas of existing buildings within these districts shall be required to meet all off-street motor vehicle parking requirements.
7. In the Compact Neighborhood Tier, the minimum and maximum parking rates for household living dwelling units shall be as follows:

	Minimum	Maximum
Household Living, except as Listed Below	1 space/unit	2 spaces/unit
Affordable Housing Dwelling Units	None	2 spaces/unit

8. Methods to Exceed Maximum Parking

The maximum amount of motor vehicle parking can be exceeded by any of the following methods:

- a. The additional parking spaces and drive aisles shall be pervious paving pursuant to the definition of pervious paving in Sec. 16.3, Definitions.
- b. The additional parking spaces shall be provided as structured parking subject to the following requirements:
 - (1) The footprint of proposed structured parking cannot exceed 75% of the footprint of a surface parking lot designed to accommodate 100% parking; and

- (2) The maximum height shall be the height permitted within the zoning district.
- c. The additional parking spaces are underground where parking areas are not visible from the right-of-way or adjacent properties.
- d. For all sites except in the Downtown Tier and Design Districts: a sealed alternative parking rate analysis, prepared by an engineer with expertise in transportation, that utilizes the following criteria to substantiate the need for additional parking. The City Transportation Director or designee, or NCDOT, as applicable, shall be the approving authority for the analysis.
 - (1) Data or studies of similar sites and uses;
 - (2) Comparisons to minimum standards in national published data sources such as Institute of Transportation Engineers (ITE), Urban Land Institute (ULI), National Parking Association (NPA), American Planning Association (APA), or other professionally recognized data sources; and
 - (3) Comparisons to minimum requirements of similar municipalities.

9. Parking Reduction Allowed By-Right

The minimum amount of motor vehicle parking can be reduced using the following methods for a maximum reduction of 20%:

- a. Shared Parking: Proposed developments or change of use with two or more uses can reduce the total minimum parking requirements by a maximum of 20% if the following factors are demonstrated through a parking generation analysis, prepared and sealed by a registered engineer with transportation expertise, documenting the following:
 - (1) The peak hours for each use do not overlap; and
 - (2) The proposed amount of parking is sufficient to accommodate the anticipated demands for each of the uses at peak hour.
- b. Additional Bicycle Parking and Public Transit
A maximum 5% reduction is permitted if either of the following is met, and a maximum of 10% if both are met:
 - (1) Proposed development sites or change of use sites where public transit stops exist or will be provided at a location approved by the transit provider as part of the site plan submittal.
 - (a) The stop is within one-quarter mile walking distance; and
 - (b) The stop and development site are connected via an existing or proposed paved and handicap-accessible walkway or sidewalk.
 - (c) Crossings must be at-grade and at appropriate intersections. No mid-block crossings shall satisfy this option.
 - (2) An additional six bicycle parking spaces are provided for every one motor vehicle parking space reduced.

10. Parking Reductions Allowed with a Minor Special Use Permit

Reductions of more than 20% of required motor vehicle parking shall require the approval of a minor special use permit pursuant to Sec. 3.9, Special Use Permit. In addition to the findings within paragraph 3.9.8A, General Findings, the following findings shall be made:

- a. Current industry standards and parking rate methodologies were utilized;
- b. Comparable developments that serve similar population densities or development intensities were studied; and
- c. The reduction will protect local, state, or federal designated historic resources, if applicable to the site.

C. Alternate Forms of Compliance

1. Off-site parking, including publicly-controlled parking:

Proposed development can satisfy motor vehicle parking requirements through existing off-site parking not proposed as part of the development site or change of use pursuant to the following criteria:

- a. All required handicapped accessible parking spaces shall be provided on-site;
- b. The spaces are not on-street parking spaces;
- c. The spaces at the donor site are located no further than 1,000 linear feet walking distance to the main entrance of the proposed facility along an existing or proposed public or private (with pedestrian access agreement) paved, handicapped accessible route;
- d. The walking route to and from the off-site parking does not cross a major thoroughfare or freeway, unless controls are existing or proposed to allow for pedestrian crossing;
- e. Crossings of right-of-way shall be at-grade at appropriate intersections, and not mid-block;
- f. The spaces provided by the donor site are in excess of the minimum parking requirements for that site, or the shared parking requirements pursuant to paragraph 10.3.1B.9.a, can be satisfied;
- g. A lease agreement between the record owners shall be required. The owner of the off-site parking area shall enter into a written agreement in a form acceptable to the City or County Attorney, as appropriate, providing that the land comprising the parking area shall never be disposed of except in conjunction with the sale of the building which the parking area serves so long as the facilities are required; and that such agreement shall bind his heirs, successors, and assigns; and
- h. Residential parking areas cannot serve as off-site parking for non-residential uses.

2. Urban and Compact Neighborhood Tiers, and the CI District:

For every twenty-three contiguous feet of street frontage for which there is adjacent permitted on-street parking, the minimum required motor vehicle off-street parking shall be reduced by one space.

- a. Credit for on-street parking shall only be counted towards one of the uses in any multi-use development.
- b. Credit shall not be given for a partial space.
- c. Credit shall not be given for designated handicapped accessible spaces, loading zones, or taxi stands.
- d. Credit cannot be used for single-family or duplex residential development.
- e. On-street parking used to reduce off-street parking is within the public right-of-way and shall remain available for general use subject to public parking standards.

10.3.2 Handicapped Accessible Parking

Parking spaces in accordance with the following table shall be provided to accommodate the needs of handicapped individuals.

Off Street Parking Spaces Provided	Minimum Handicapped Accessible Spaces Required
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1,000	2% of the total spaces provided
1,001 or more	20 spaces, plus one space for every 100 spaces over the first 1,000 spaces provided

10.3.3 Bicycle Parking in the SRP-C District (County Only), Downtown and Compact Neighborhood Tiers

Uses within the SRP-C District (County Only), Downtown and Compact Neighborhood Tiers shall provide bicycle parking based on the category and square footage of each use.

A. Restaurant and Retail Sales and Services

Restaurant and retail sales and services use categories shall provide bicycle parking at a minimum rate of one bicycle parking space per 1,000 square feet of usable floor area.

Sec. 10.3 Required Parking

B. All Other Nonresidential Uses

A minimum of two bicycle parking spaces shall be required. For nonresidential uses of 10,000 square feet or more, bicycle parking shall be provided at a minimum rate of one bicycle parking space per 2,500 square feet of usable floor area.

C. Residential Uses

For all residential development, bicycle parking shall be provided at a minimum rate of one bicycle parking space per dwelling unit.

Sec. 10.4 Design Standards

10.4.1 General

A. Location of Parking

1. Rural and Suburban Tiers

In the Rural and Suburban Tiers, off-street parking may be located in any developable area of a site, excluding all areas required for buffers.

2. Urban Tier

- a. In the Urban Tier, at least two-thirds of all off-street parking for nonresidential uses shall be located to the side and rear of structures.
- b. In the CI district, all new off-street parking shall be located to the side and/or rear of structures.

3. Compact Neighborhood and Downtown Tiers

- a. In all districts within the Compact Neighborhood Tier and the Downtown Tier, surface parking shall be located adjacent to a street only if, in addition to landscaping materials required pursuant to Sec. 9.8, Vehicular Use Area Landscaping, a wall or decorative fence consistent with the requirements of Sec. 9.9, Fences and Walls, with a minimum height of 30 inches is provided, as applicable:
 - (1) At the build-to line established pursuant to Sec. 6.12, Design Districts; or
 - (2) In a location no further from the right-of-way than the maximum street yard established pursuant to paragraph 6.10.1, Nonresidential Development Standards.
- b. When the required wall or fence is located within a sight distance triangle, the minimum height shall be 24 inches to reduce impediments to traffic visibility.

B. Use of Compact Spaces

Up to 20 % of the off-street parking spaces can be sized and designated for compact vehicles.

1. Compact parking spaces shall be signed and/or marked as "Compact."
2. No more than 10 compact spaces shall be located in any given row of parking.

C. Marking of Spaces

Nonresidential parking spaces and multifamily parking spaces shall be striped on pavement or designated with some other form of permanent marking.

10.4.2 Parking Space Design Standards

Each required off-street parking space shall open directly onto an aisle or driveway which is designed to provide safe and efficient access to each parking space. Parking shall not be allowed to impede traffic movement on alleys or streets or to impede pedestrian or bicycle activities.

A. Dimensions

1. Area

a. Standard Spaces

- (1) A required off-street parking space shall be at least eight feet, six inches in width and 18 feet in length exclusive of any access drives, aisles, or columns.
- (2) Within parking structures, columns can extend into a parking space as follows:
 - (a) Encroachments are not allowed for compact spaces;
 - (b) A maximum of 30% of the total number of parking spaces within the structure can be affected by an encroachment.
 - (c) If the encroachment impacts only one space, then the maximum amount of encroachment shall be 18 inches. If the encroachment impacts two or more adjacent spaces, then the maximum amount of encroachment shall be 24 inches, with a maximum individual encroachment of 18 inches.

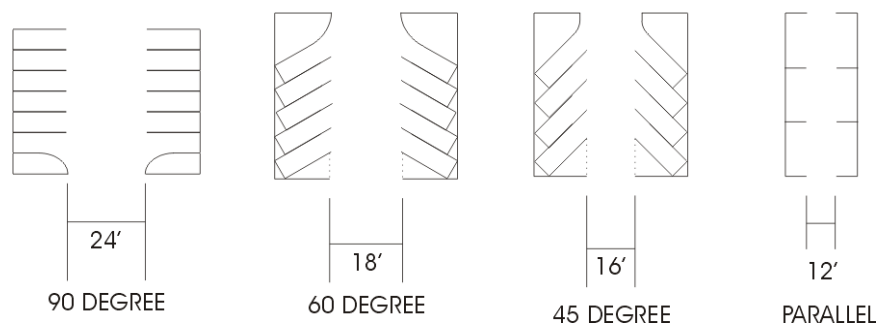
b. Compact Spaces

A compact vehicle space shall be at least seven feet, six inches in width and at least 14 feet in length, exclusive of access drives, aisles, or columns.

c. Parallel Parking

Parallel parking spaces shall be increased by five feet in length for both regular and compact parking.

2. Aisles shall not be less than 24 feet wide for 90 degree parking, 18 feet wide for 60 degree parking, 16 feet wide for 45 degree parking and 12 feet wide for parallel parking. The angle shall be measured between the centerline of the parking space and the centerline of the aisle. No parking shall be allowed in the aisles.



3. The maximum grade permitted for any required parking shall not exceed 8%.
4. Alternative Forms of Compliance
 - a. Parking spaces using geometric standards other than those specified in this Ordinance may be approved by the City Transportation Director or designee if the alternative standards are developed and sealed by a registered engineer with expertise in parking facility design, demonstrating that the alternate

dimensional standards satisfy off-street parking requirements as adequately as would a facility using standard Ordinance dimension.

- b. Valet Parking: Valet parking can be approved as a means of satisfying otherwise applicable off-street parking design requirements where all of the following standards are met:
 - (1) Adequate assurance of the continued operation of the valet parking, such as a contractual agreement for valet services or the tenant's affidavit agreeing to provide such services, is provided.
 - (2) An equivalent number of valet spaces shall be available to replace the required parking spaces. Such valet spaces do not require individual striping, and can include the tandem or mass parking of vehicles.
 - (3) If located off-site, valet parking shall meet the requirements of paragraph 10.3.1C.1, except for paragraph 10.3.1C.1(c).

B. Plan

Parking design for nonresidential and multifamily uses shall be approved as part of site plan review.

C. Lighting

Parking lot lighting shall be shielded so that it does not cast direct light beyond the property line (see Sec. 7.4, Outdoor Lighting). Parking lots shall be illuminated during night business hours.

D. Surfacing

1. In the Rural Tier

All required vehicle use areas and driveways, except for those associated with single family detached dwellings, shall be covered with an all-weather surface designed to support anticipated loads.

- a. Loose material surfaces shall be contained with a permanent edging.
- b. The surface shall be maintained so that traffic may move safely in and out of the parking area.
- c. When loose material is used, parking blocks are required to designate each parking space when the vehicle use area is greater than ten parking spaces.

2. In All Other Tiers

a. In the Urban and Suburban Tiers

- (1) All required vehicle use areas and driveways, except for those associated with single-family dwellings, shall be paved in accordance with standards and specifications of the City Public Works Department.
- (2) All excess vehicle use areas, and those associated with single-family dwellings, shall be covered with an all-weather surface designed to support anticipated loads.
- (3) Loose material surfaces shall be contained with a permanent edging.

- (4) The surface shall be maintained so that traffic may move safely in and out of the parking area.
- (5) When loose material is used, parking blocks are required to designate each parking space when the vehicle use area is greater than ten parking spaces.
- b. In the Compact Neighborhood and Downtown Tiers, all vehicle use areas and driveways shall be paved in accordance with standards and specifications of the City Public Works Department.

10.4.3 Design Standards for Handicapped Accessible Parking

- A. A handicapped accessible parking space can be reduced to an eight-foot width as long as the space is adjacent to a minimum five-foot access aisle marked and constructed to ADA standards. Otherwise, the parking space shall be sized as a standard parking space.
- B. All off-street handicapped accessible parking spaces shall be located in the closest parking area to a public entrance to the building but no more than 250 feet from such entrance.
- C. All off-street handicapped accessible parking spaces shall be paved in accordance with standards and specifications of the City Public Works Department.
- D. All off-street handicapped accessible parking spaces shall be designated by a sign or other means specified by State requirements.

10.4.4 Design Standards for Bicycle Parking

A. General Standards

Unless otherwise modified below, all bicycle parking shall meet the following standards.

- 1. Where bicycle parking facilities are not clearly visible to approaching cyclists, signs shall be posted to direct cyclists to the facilities.
- 2. Bicycle parking locations shall not impede pedestrian or motorized vehicle movement or circulation.
- 3. Each bicycle parking space shall be sufficient to accommodate a bicycle at least six feet in length and two feet wide.
- 4. An aisle or other space shall be provided for parking spaces for bicycles to enter and leave the facility. The aisle shall have a width of at least four feet to the front or the rear of a parking stall.
- 5. Bicycle parking shall remain accessible and not be rendered unusable by fixed or movable objects.
- 6. Overhead clearance shall be at least seven feet.
- 7. When a percentage of the required motorized vehicle spaces are provided in a structure, an equal percentage of the required bicycle spaces shall be located inside that structure, unless other accessible, covered bicycle parking is located elsewhere on the site.
- 8. When a rack is utilized, the rack shall be permanently anchored to a floor, foundation or ground, wall, or ceiling as appropriate for the type rack proposed.

9. A rack shall support a standard bicycle frame at two points of contact without damage to frame, wheels, or components, allowing the bicycle frame and at least one wheel to be conveniently secured.
10. Bicycle racks placed within the public right-of-way shall not conflict with pedestrian use and encroachment agreements with the City or NCDOT, as applicable, must be obtained.
11. Lighting and other security design features shall be provided in outdoor or structured bicycle parking facilities equivalent to that provided in the facilities for motorized vehicles.

B. Types of Bicycle Racks or Storage

The following types of racks or storage can be used to satisfy bicycle parking requirements.

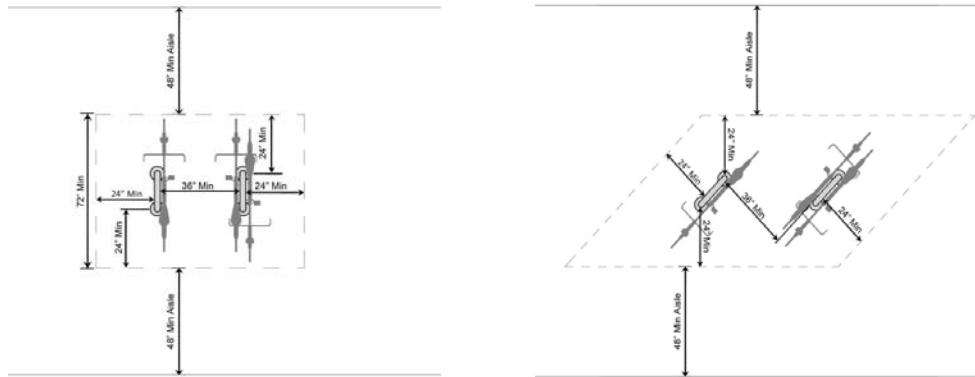
1. “Inverted U” and Circular Racks

The following depict typical inverted-U and circular bicycle racks.



- a. Racks that are placed parallel to each other (side-by-side or angled) shall be spaced at least 36 inches apart.
- b. Racks placed end-to-end shall be as follows:
 - (1) At least 60 inches (five feet) apart if placed in a cluster parking configuration, or in a linear configuration where pedestrian movement would not be impacted, such as along a wall; or
 - (2) At least 96 inches (eight feet) apart if placed individually in a linear manner where additional space is required to prevent an impediment to pedestrian movement, such as along a sidewalk.
- c. Racks shall be spaced at least 24 inches from walls, curb faces, pavement edges, and other obstructions. A rack can be placed closer than 24 inches to an obstruction; however, the space between the rack and obstruction shall not count as a parking space.
- d. Racks shall be spaced at least 24 inches from walls, curb faces, pavement edges, and other obstructions. A rack can be placed closer than 24 inches to an obstruction; however, the space between the rack and obstruction shall not count as a parking space.

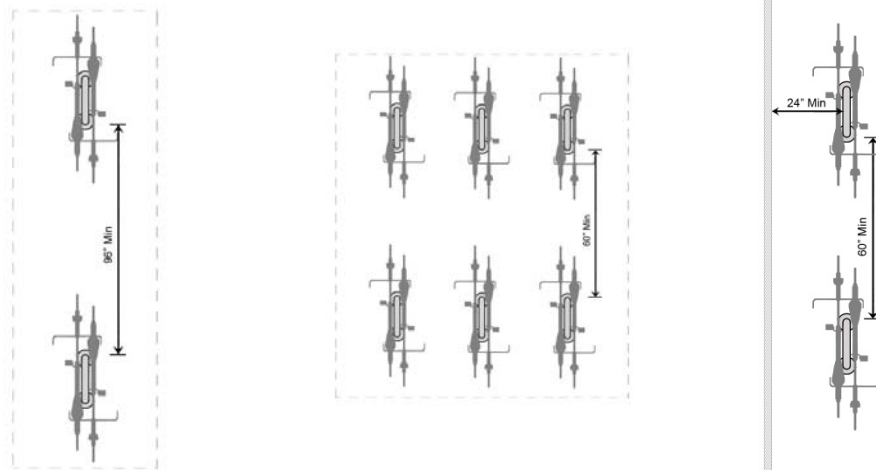
Diagrams illustrating minimum side-by-side placement, minimum aisle width to front or rear of rack, and minimum placement from wall or obstruction:



Diagrams illustrating minimum end-to-end separation:

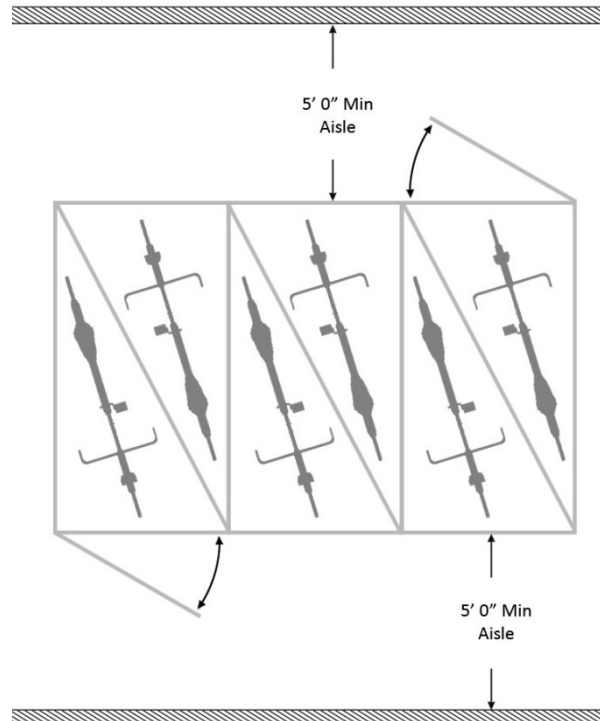
96" Linear placement:

Cluster and 60" Linear placement:



2. Bicycle Lockers

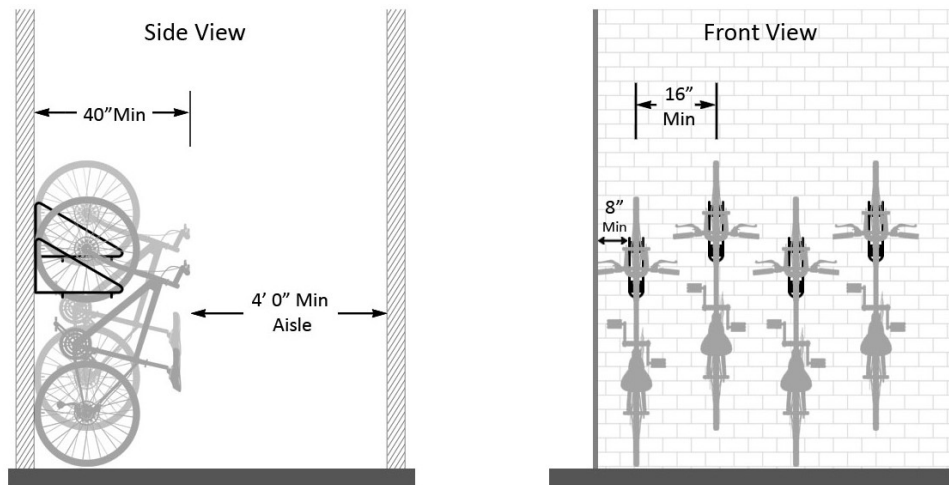
- a. Unless placed within individual dwelling units, bicycle lockers shall be anchored in-place.
- b. Bicycle lockers shall have an opening clearance of at least five feet.



3. Vertical Space Saver Racks

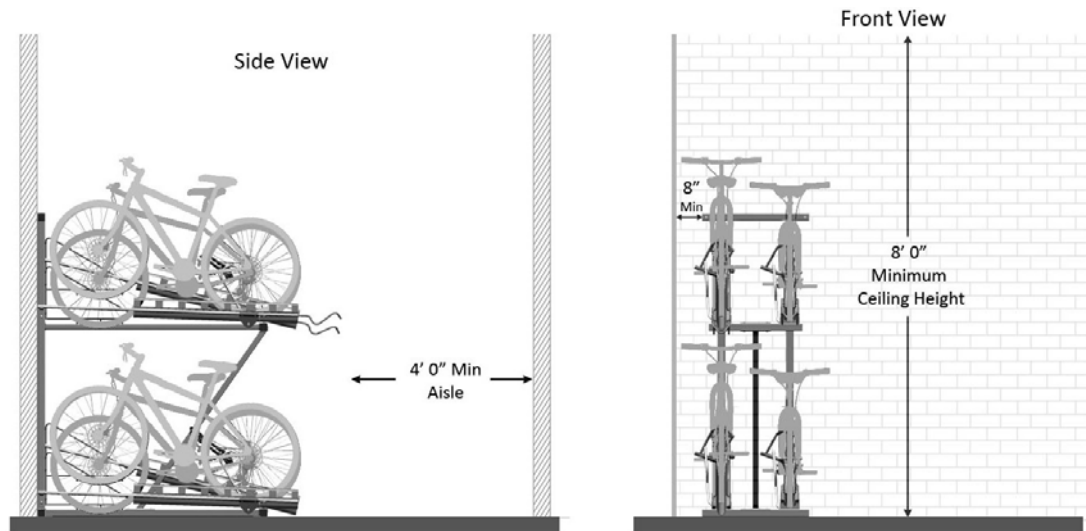
- a. The minimum ceiling height shall be eight feet.
- b. Unless product specifications differ, each bicycle stall shall be at least 16 inches wide.
- c. Each bicycle stall shall provide a depth of at least 40 inches measured from the back of the stall to the nearest side of the access aisle.
- d. Unless product specifications differ, the minimum spacing between a wall or other obstruction and the rack side shall be eight inches.

- e. A loop or mechanism shall be provided to allow the bicycle frame to be secured using either a chain and padlock, or a U lock.

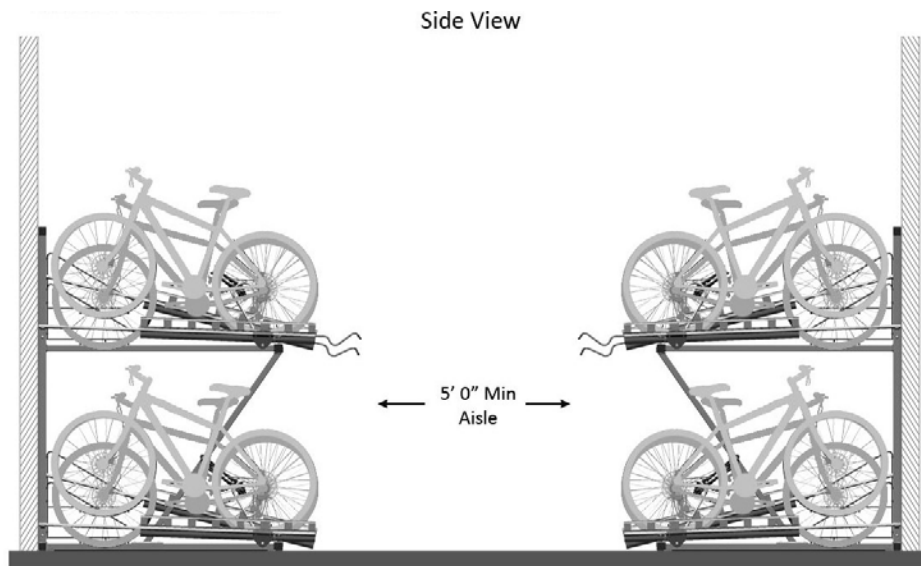


4. Double Decker Racks

- a. The minimum ceiling height shall be eight feet.
- b. Unless product specifications differ, the minimum spacing between a wall or other obstruction and the rack side shall be eight inches.
- c. For double loaded aisles, the minimum aisle width shall be five feet.
- d. A loop or mechanism shall be provided to allow the bicycle frame to be secured using either a chain and padlock, or a U lock.



Minimum aisle width for double-loaded aisle:



C. Outdoor Parking

1. Bicycle parking can be located as follows:
 - a. Between the vehicle use area and the facade containing the main entrance of the building; or
 - b. No further from the building's main entrance than the closest motorized vehicle parking space, excluding parking for persons with disabilities; or
 - c. Up to 100 feet from a main entrance, if the following is provided:
 - (1) The parking area is covered by a permanent canopy;

- (2) The parking area is visible from the front door of the building's main entrance;
 - (3) The canopy provides at least 72 inches in cover for the direction that bicycles will be oriented;
 - (4) Lighting shall be provided in the bicycle parking area equivalent to that provided in facilities for motorized vehicles.
2. When there are multiple main entrances, bicycle parking shall be distributed to accommodate each entrance.
3. Racks shall be constructed of weather-resistant materials.
4. Outdoor bicycle parking facilities shall be surfaced with an all-weather material, level, and accessible to the street.
5. Outdoor bicycle parking spaces located within a vehicle use area shall be designed to protect a bicycle from being hit by a motorized vehicle. Such design shall be a curb, post, bollard, or some other physical barrier.

D. Indoor Parking

1. Except for bicycle parking within individual dwelling units, bicycle parking storage rooms or areas shall not require access via stairs.
2. Bicycle parking spaces proposed within individual dwelling units shall be allowed as follows:
 - a. A floorplan for each type of unit shall be provided indicating the bicycle parking space.
 - b. If a closet or storage room is enclosed, the access door shall swing out or slide completely clear of the opening.

3. Minimum Outdoor Parking Required

A minimum amount of bicycle parking spaces shall be publicly-accessible through outdoor parking or within parking structures at the following rates:

Total Required Bicycle Parking	Amount Required Outdoor or within a Parking Structure
Less than 20 spaces	A minimum of two spaces
20 or more spaces	A minimum of six spaces or at least 5% of required bicycle parking spaces, whichever is greater

E. Standards for Design Districts

Bicycle parking shall comply with the requirements of paragraphs A through D, above, unless modified as follows:

- 1. Standards for Restaurant and Retail Sales and Service Uses**
 - a.** Required bicycle parking spaces located outdoors shall be located within 50 feet of the primary building entrance and visible from the public right-of-way.
 - b.** In order to reduce streetscape clutter and provide greater visibility for bicycle parking areas, clustered facilities can be provided when located a maximum of 100 feet from the primary building entrance so long as they remain within the blockface.
- 2.** For all other uses, bicycle parking shall be located within 100 feet of the primary or secondary entrance to the building.
- 3.** Required bicycle racks shall comply with the specifications found within the *Durham Design Manual*.

Sec. 10.5 Vehicle Stacking

10.5.1 Minimum Number of Spaces

A. Off-street stacking spaces shall be provided as follows:

Activity type	Minimum stacking spaces in the Design Districts	Minimum stacking spaces in all other districts	Measured from the stacking lane entry to the following point of service:
Automated teller machine (drive-up)	1	3	Teller machine
Bank teller lane	n/a ¹	4	Teller or window
Car wash bay, full-service	n/a ¹	6	Bay
Car wash bay, self-service	n/a ¹	3	Bay
Dry cleaning/laundry drive-through	n/a ¹	3	Cleaner/laundry window
Gasoline fueling	2	2	Fueling position
Gatehouse, staffed	2	4	Gatehouse
Gate, unstaffed	1	2	Gate
Pharmacy pick-up	n/a ¹	3	Pharmacy window
Restaurant drive-through with combined order/pick-up window(s)	n/a ¹	6 per window	Order/pick-up window
Restaurant drive-through with separate order point(s) and pick-up window(s)	n/a ¹	4 in addition to either	Each pick-up window
	n/a ¹	6	Order point closest to stacking lane entry for each undivided order lane
	n/a ¹	or 4	Order point closest to stacking lane entry for each divided order lane
Schools (kindergarten through grade 12)	As required per NCDOT Municipal and School Transportation Assistance (MSTA) Standards		
Valet parking	2	3	Valet stand

¹ An existing non-conforming use in Design Districts shall comply with the minimum stacking space requirement for all other districts.

- B. A minimum stacking space number includes the space at the point of service. A drive-through facility with unspecified activity type shall comply with the most stringent stacking requirement(s) applicable in the zoning district in which the facility is located as determined by the Planning Director.
- C. Uses not listed shall be reviewed by the Planning Director or designee for the appropriate stacking rate classification, pursuant to Section 3.1, Interpretation of this Ordinance.

10.5.2 Design and Layout of Stacking Spaces

Required stacking spaces shall be subject to the following design and layout standards:

A. Size

Stacking spaces shall be a minimum of eight feet in width by 20 feet in length.

B. Location

Stacking spaces shall not impede on- or off-site traffic movements or movements into or out of off-street parking spaces.

C. Design

Stacking spaces shall be separated from other internal driveways by raised medians if deemed necessary by the City Transportation Director or NCDOT, or appropriate designees, for traffic movement and safety.

10.5.3 Alternative Forms of Compliance

Alternatives to the requirements indicated above are permitted through approval by the City Transportation Director or designee, or NCDOT, as applicable, of a sealed traffic management plan, prepared by an engineer with expertise in transportation, utilizing one or more of the following:

A. Collection of data or studies of similar sites and uses;

B. Comparisons to minimum standards in national published data sources such as Institute of Transportation Engineers (ITE), Urban Land Institute (ULI), National Parking Association (NPA), American Planning Association (APA), or other professionally recognized data sources; or

C. Comparisons to minimum requirements of similar municipalities.

Sec. 10.6 Loading Areas

10.6.1 Location

No loading spaces shall be located within 30 feet of street intersections or in any required yard space, except in the CI District and Design Districts where the required distance shall be 20 feet. Street intersections shall be measured from the back of the predominant curbline (not including bulb outs) or future curbline where no curb currently exists.

10.6.2 Surfacing

A. In the Rural Tier

All open off-street loading areas shall be surfaced with an all-weather material such as concrete, asphalt, or at least six inches of properly compacted crushed stone, designed to carry the heaviest vehicle loads that can commonly be expected, including the weight of fire and sanitation equipment as well as delivery vehicles. Loading areas surfaced with loose materials such as crushed stone shall provide permanent edging around the area.

B. In All Other Tiers

All open off-street loading areas shall be paved with an all-weather material such as concrete or asphalt, designed to carry the heaviest vehicle loads that can commonly be expected, including the weight of fire and sanitation equipment as well as delivery vehicles.

10.6.3 Utilization

Space allocated to any off-street loading space, accessory drives, or aisles, shall not be used to satisfy the space requirements for any off-street parking or trash handling facilities.

10.6.4 Ingress and Egress

Each required off-street loading space shall be provided with a means of unobstructed ingress and egress to an alley or onto a public street wide enough to accommodate expected vehicles. Where such ingress and egress is made into a public street, it shall be through driveways or openings which meet required standards. Permanent wheel stops or curbing shall be provided to prevent any vehicle using the loading area from encroachment on the required street yards, side yards, or adjacent property.

10.6.5 Off-Street Loading Requirements

- A.** Loading spaces shall be required for uses which normally handle large quantities of goods, including but not limited to industrial plants, wholesale establishments, warehouses, freight terminals, hospitals and retail establishments.
- B.** Off-street loading spaces can be either inside or outside the building and on the same or adjoining lots.
- C.** Any loading area outside of the DD District located adjacent to a residential use shall not receive deliveries between the hours of 11 p.m. and 6 a.m.
- D.** Loading spaces shall not hinder the movement of traffic or pedestrians.

- E. No motor vehicle repair work or service of any kind shall be permitted in conjunction with loading facilities provided in any district.

F. Dimensional Requirements

1. Off-street loading spaces, excluding maneuvering areas, shall be a minimum of 10 feet wide by 25 feet long.
2. Vertical clearance shall be a minimum of 14 feet.

- G. Loading areas shall be signed to indicate "No Idling."

10.6.6 Landscaping and Screening Requirements

- A. Landscaping in accordance with Section 9.8, Vehicular Use Area Landscaping, shall be provided for loading spaces and associated drive aisles.
- B. Where project boundary buffers are not required, loading docks shall be screened from public streets and adjacent residential property in accordance with screening requirements of Section 9.7, Screening.

10.6.7 Residential Setback Requirements

A minimum setback of 50 feet shall be required where loading docks face a residential district or a structure with first-floor residential uses, unless the loading area (dock and/or loading spaces) is completely screened from view with a wall in accordance with the requirements of Sec. 9.9, Fences and Walls.

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Article 11 | Sign Standards

Sec. 11.1 General

11.1.1 Purpose

The purpose of this section is:

- A. To encourage the effective use of signs as a means of communication;
- B. To maintain and enhance the aesthetic environment, and the community's ability to attract sources of economic development and growth;
- C. To eliminate physical and visual clutter;
- D. To improve pedestrian and traffic safety; to minimize the possible adverse effects of signs on nearby public and private property; and
- E. To enable the fair and consistent enforcement of these sign regulations.

11.1.2 Effect

The effect of this section is:

- A. To establish a permit system that allows a variety of types of signs on business premises and a limited variety of signs on other premises, subject to this Ordinance and its permit procedures;
- B. To allow certain small, unobtrusive signs incidental to the principal use of a site without a permit if such signs meet the substantive requirements of this Ordinance;
- C. To prohibit off-premise advertising signs, except where regulation is controlled by state or federal law;
- D. To allow a variety of types of noncommercial signs subject to the same substantive and permit requirements that control on-premise signs;
- E. To allow certain types of signs to make minor encroachments of the public right-of-way, if specially permitted; and
- F. To prohibit all signs not expressly permitted by this Ordinance.

Sec. 11.2 General Requirements for Signs

11.2.1 Sign Defined Interpretations

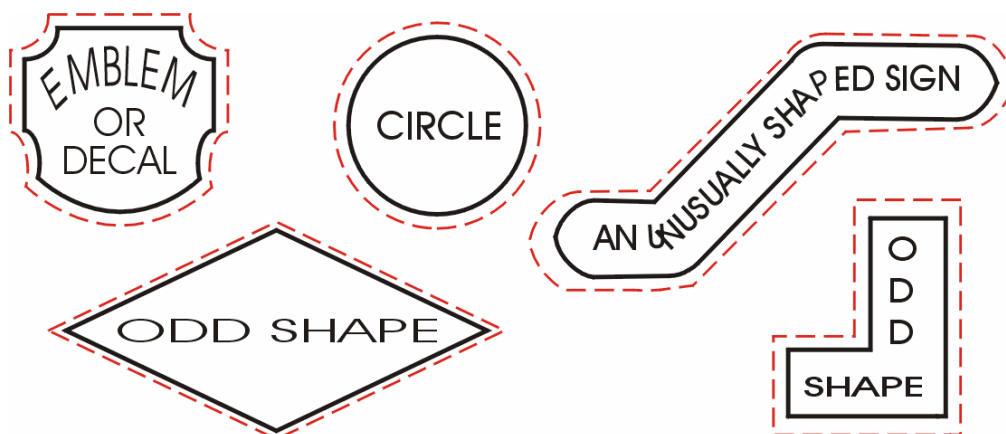
- A. A sign shall be considered any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, structures, designs, trade names, or trade marks by which anything is made known such as are used to designate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or products, which are legible from any public street or adjacent property and used to attract attention.
- B. This definition includes the structure or the face on which a sign message is displayed.
- C. For the purposes of this section, this definition shall not include "trade dress," i.e.; architectural features identified with a product or business, as a sign.
- D. Various kinds of signs are further defined in this section.
- E. (County Only) Signs within the SRP-C District shall be regulated pursuant to this Article if legible from property not zoned SRP-C, instead of "adjacent property" as indicated in paragraph A, above.

11.2.2 Sign Calculation Standards

A. Sign Area

1. The area of a sign shall include all lettering, wording, designs and symbols, together with the background, whether open or enclosed, on which they are displayed. The supporting structure or bracing of a sign shall be omitted in measuring the area of the sign unless such structure or bracing is made part of the message or face of the sign. Any backlit area shall be considered part of the face of the sign.

Commentary: The "golden arches" at McDonald's, if used as support for a sign, are clearly integral to the sign message and would be included in the computation of the area of the sign face.



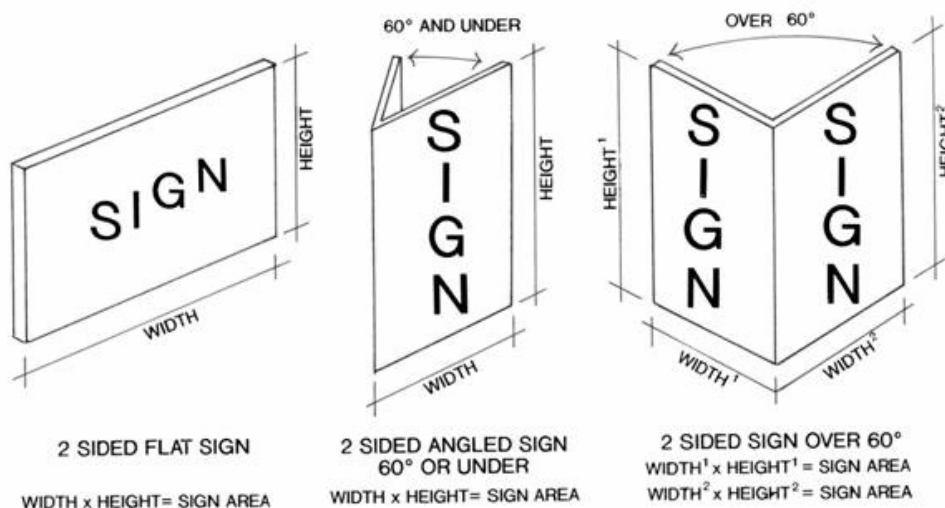
2. Where a sign consists of individual letters, words or symbols attached to a surface, building, canopy, awning, wall or window and all such elements are located in the same plane, the sign area shall be the area of the smallest rectangle which completely

encompasses all such letters, words or symbols and any accompanying background of a color different than the natural color of the wall. Where such sign includes multiple words, each word located in the same plane shall be computed separately.



Commentary: Channel letter signs, mounted logos, and similar devices are treated differently than signs in cabinets – the wall area between multiple elements does not count as sign area.

- The area for a sign with more than one face shall be computed by adding together the area of all sign faces. On all signs other than wall signs, which shall only be allowed one face, signs with identical sign faces placed in such a manner to ensure that the angle at which the two sign faces are placed does not exceed 60 degrees, shall be considered as a single face.



Commentary: It is presumed that where sign faces are placed less than 60 degrees apart, both faces are not readable from any one point.

- The entire surface area of a multi-tenant sign that depicts the names of the individual tenants shall count toward the total aggregate area of the sign.
- All monument signs shall incorporate a street address number or address range. Street address numbers shall be a minimum of six inches high in residential districts, and 12 inches high in all other districts. The area of the address number shall not be computed as part of the sign face unless it exceeds twice the minimum number height

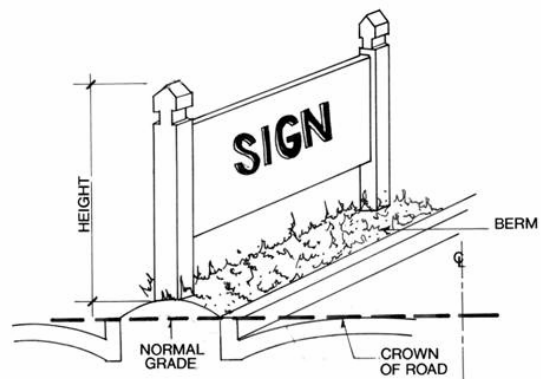
requirement. All such street address numbers shall be displayed in accordance with City or County standards, as applicable.

B. Aggregate Sign Area

1. The maximum allowable aggregate sign area of all signs in a project that may be allocated among all sign types allowed or permitted on the site shall be as follows:
 - a. Buildings within the DD District and Compact Neighborhood Tiers shall be permitted a sign area equal to 25% of the wall area below 26 feet in height plus 10% of the wall area above 26 feet in height, except where this Ordinance allows signs in the DD District with no maximum size. (County Only) This standard shall also apply to the SRP-C District.
 - b. Buildings within nonresidential zoning districts except those listed in paragraphs c. or d. below shall be permitted two square feet of sign area for each linear foot of lot frontage.
 - c. Buildings in the OI District and the –TO Overlay shall be permitted one square foot of sign area for each linear foot of lot frontage.
 - d. Buildings in the SRP, IL, and I districts shall be permitted two and one quarter square feet of sign area for each linear foot of lot frontage.
 - e. In order to accommodate projects with very small frontages at least 32 square feet of sign area shall be permitted as a minimum in all nonresidential districts.
2. Application of the aggregate sign area allowable shall not permit the area of any single sign or sign type to exceed the standard established elsewhere in this Article.

C. Sign Height

The height of a sign shall be computed as the distance from the base of the sign at a computed grade to the top of the highest attached component of the sign (including the sign face, sign structure, or any other appurtenance). The computed grade shall be the elevation of the nearest point to the proposed sign location of the crown of the nearest public street providing access; or the grade of the land at the principal entrance to the principal structure on the lot, whichever is higher.



11.2.3 Substitution of Noncommercial Message

Noncommercial signs shall be allowed in all districts and may be substituted for any sign expressly allowed under this Ordinance. Noncommercial signs shall be subject to the same permit requirements, restrictions on size and type, and other conditions and specifications as apply to the sign for which they are being substituted.

11.2.4 Illumination

- A. Signs may be illuminated from within or from an external source, but such illumination shall be in a manner which avoids glare or reflection which in any way interferes with traffic safety.
- B. Internally illuminated signs shall be required to have an opaque background and translucent copy.
- C. Sign lighting shall not be detrimental to adjacent residential property. Property directly across a public right of way, other than a controlled access highway, shall be considered to be adjacent property.
- D. Unless otherwise permitted within this Ordinance, signs shall not be illuminated by moving lights, flickering lights, or a string of lights placed around the sign.

11.2.5 Design, Construction and Maintenance

- A. All signs shall comply with applicable provisions of the North Carolina Building Code and the National Electrical Code.
- B. Signs shall be constructed of permanent materials and permanently affixed to the ground or building except for those signs that, by their nature, are considered temporary:
- C. Permanent signs shall be maintained in good condition at all times and shall be kept free of cracked or peeling paint, missing or damaged sign panels or supports, and weeds, grass or vegetation that obscures the view of the sign message.

11.2.6 Placement of Signs

- A. Signs shall be located so as not to block windows, doors, or other means of ingress and egress.
- B. Unless otherwise allowed in this Ordinance, no commercial messages shall be allowed on construction fencing.

11.2.7 Changeable Copy on On-Premise Signs

Except as authorized under paragraph 11.3.1B, Exception for Downtown Tier, changeable copy shall be allowed only on on-premise signs that are: in nonresidential districts, associated with nonresidential uses in the PDR District, or associated with places of worship and institutional uses in any district, subject to the following:

- A. No more than 50% of the area of a sign shall be devoted to changeable copy, except for signs for theaters which can devote up to 80% of a sign to changeable copy.
- B. The display of copy shall not change more than eight times in one day, except for time and temperature displays.
- C. Displayed copy shall not be animated, blinking, chasing, flashing, or have other moving effects. This provision shall not restrict the copy from changing from one message to another.

11.2.8 Nonconforming Signs

- A.** Signs that were lawful as of the effective date of this Ordinance but are not in conformance with current requirements shall be permitted to be maintained as nonconforming signs.

B. Nonconforming Off-Premise Signs

Certain off-premise signs, as defined in Sec. 11.3, Prohibited Signs, that were made nonconforming by previous ordinances but were allowed to continue beyond the amortization period in force for other off-premise signs may continue to exist until such point that compensation is not required for their removal under federal law, subject to the following restrictions, which are carried forward from previous ordinances, or are clarifications of such ordinances:

1. The signs and supporting structures may not be enlarged, moved to a different location in the City or County except by moving 1/100th of a mile on the same sign location or site as authorized by 19A NCAC 2E.0210(16), or improved through replacement by substantially different materials or in any other manner;
2. Lights and/or other electric or electronic features may not be added, and the intensity of lighting may not be increased;
3. The signs must operate in compliance with all other restrictions in Article 11, and the UDO, and other local regulations, including but not limited to prohibitions on sign operation and sign features contained in paragraph 11.3.1 and 11.3.2 and prohibitions on dilapidated and damaged signs contained in 11.3.6 and 11.3.7.
4. The signs shall be removed if repair or damage to the sign and structure exceeds 50% of value as determined by the criteria in 19A NCAC 2E.0225(f);
5. The signs shall operate in compliance with all restrictions contained in federal and/or State law and regulation; and
6. The owner of such signs shall maintain all necessary records and documents, including permits, required to be obtained under previous ordinances and/or State law or regulation, to demonstrate that the sign may continue to exist under the provisions of paragraph 11.3.5.

The restrictions contained in this section, 11.2.8.B shall not be interpreted to prohibit the City or County from requiring removal of any nonconforming off-premise sign when removal is accomplished in accordance with applicable law, including but not limited to federal and/or state requirements regarding compensation.

Sec. 11.3 Prohibited Signs

The following signs shall be prohibited, and may neither be erected nor maintained:

11.3.1 Animated or Motion Signs

Signs with animated, blinking, chasing, flashing, or moving effects; however, this provision shall not prohibit signs with an alternating display of time or temperature and signs with changeable copy pursuant to paragraph 11.2.7, Changeable Copy on On-Premise Signs.

A. General Prohibition

In all tiers other than the Downtown Tier, signs with animated, blinking, chasing, flashing, or moving effects (including but not limited to sign faces that periodically change to show different images or messages) are prohibited, with the exception of signs that alternate the display of time or temperature and signs with changeable copy under Sec. 11.2.7, Changeable Copy on On-Premise Signs.

B. Exception for Downtown Tier

In the Downtown Tier, signs with animated, blinking, chasing, flashing, or moving effects, including sign faces that periodically change to show different images or messages shall be allowed through the issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit. In addition to the review factors in paragraph 3.9.8B, Review Factors, the following review factors shall also be considered:

1. The sign or signs are spaced so as to not lead to excessive animated signage in an area;
2. There is no negative impact upon traffic safety; and
3. There is artistic or historic merit or other design qualities that will have a positive impact on the downtown.

11.3.2 Rotating Signs

Rotating or revolving signs.

11.3.3 Windblown or Inflated Signs

Fluttering, spinning, windblown or inflated devices including pennants, propeller discs, flags or banners which do not conform with the requirements of this Ordinance unless associated with a temporary use in the Downtown Tier authorized under Sec. 3.12, Temporary Use Permit, and Sec. 5.5, Temporary Uses.

11.3.4 Portable Signs

Any sign not permanently attached to the ground or other permanent structure, including but not limited to signs:

- A. With attached wheels;
- B. Converted to A- or T-frame signs;
- C. Menu and sandwich board signs. This provision shall not apply to approved moveable sidewalk signs as set forth in paragraph 11.5.2, Moveable Signs on Sidewalk;
- D. Gas or hot air filled displays; and

- E. Attached or painted on vehicles parked and visible from the right-of-way, unless said vehicle is used as a vehicle in the normal day-to-day operations of the business.

11.3.5 Off-Premise Signs

- A. A sign that directs attention to a business, commodity, service or entertainment not conducted, sold, or offered on the premises where the sign is located, or which business, commodity, service, or entertainment forms only minor or incidental activity upon the premises where the sign is displayed. The sale of a commodity shall be considered a minor activity if the commodity advertised is a specific brand or if the advertising content is not directly controlled, or has in the past not been directly controlled by the operator of the on-premise business. These product-oriented signs shall be considered on-premises signs if they comply with on-premise sign requirements.
- B. Notwithstanding the prohibition in paragraph 11.3.5A, above, the provisions of paragraph 11.2.8, Nonconforming Signs, shall apply to nonconforming off-premise signs located along federal and primary or interstate highways that were existing as of September 4, 1990, in the City or December 1, 1989, in the County and meet all requirements of paragraph 11.2.8.
- C. The prohibition of off-premise signs shall not apply to signs allowed pursuant to paragraph 11.6.2A.8, Way-Finding Signs, and paragraph 11.6.2A.9, Non-Residential Entry Signs.

11.3.6 Obsolete Signs

- A. A sign relating to or identifying a business or activity that has not been conducted on the premises for six months or to a transpired election or event, or to a political party or non-profit organization that no longer exists.
- B. The structure for a sign that is not allowed under this Ordinance if such structure cannot be used for a legal use or does not comply with the height, size, or other physical requirements of the Ordinance.

11.3.7 Dilapidated or Damaged Signs

A sign that has missing or broken panels, broken or damaged supports or frame, or otherwise displays inadequate maintenance, dilapidation, obsolescence or abandonment.

11.3.8 Signs Constituting Traffic Hazards

Any sign which constitutes a hazard to traffic including, but not limited to, signs located within the sight distance triangle of an intersection.

11.3.9 Signs Located in the Public Right-of-Way

Except as allowed in Sec. 11.4, Signs Allowed in All Districts without a Permit, and those signs expressly allowed in rights-of-way in Sec. 11.5, Signs Allowed in Right-of-Way, all signs, including supports, frames, and embellishments, that are located within a public right of way or attached, affixed, or painted on any utility pole, light standard, utility box or pedestal, tree, rock, or other natural object located within the public right of way or on public property, except as expressly permitted by the City Public Works Director, or designee; County General Services Director, or designee; or NCDOT, as applicable.

11.3.10 All Other Unlisted Signs


All other signs that are not expressly exempt from regulation or expressly permitted under this Article.

Sec. 11.4 Signs Allowed in All Districts without a Permit

11.4.1 General

- A. The signs under this section shall be allowed in all zoning districts.
- B. No sign permit shall be required; however, the property owner's consent shall be obtained before erecting such signage.
- C. Other than vending machines, automatic tellers, and gasoline pumps, no signs allowed under this section shall be illuminated.
- D. All signs shall be located outside the public right-of-way and outside of any required sight distance triangle except signs pursuant to paragraph 11.4.2D, Directional Signs for Sale, Lease, or Rental of Residential Property.

11.4.2 Table of Sign Types Allowed Without a Sign Permit

SIGNS ALLOWED IN ALL DISTRICTS WITHOUT A SIGN PERMIT	
A. Banner Signs	
<p>A lightweight fabric or similar material which is permanently mounted to a pole either enclosed in a frame or mounted to restrict movement caused by the atmosphere.</p> <p>Standards</p> <ol style="list-style-type: none"> Each banner shall be at least six square feet in area but no more than 36 square feet in area, and all banners on the same lot shall be consistent in terms of colors and materials used. Each banner shall be individually attached to a pole, mast arm or other structure. An overall signage plan shall be approved when multiple banners are placed on a lot. All banners shall be maintained in good condition. Banners shall display information that is solely decorative or noncommercial, and can include information that identifies historic districts or historic landmarks, and shall not be included in the computation of total sign area on a property. See Sec. 7.7, Flagpoles and Flags, for regulation of flags and flagpoles. Banners which display a logo, message, statement, or expression relating to commercial interests are considered signs which require a sign permit by this Ordinance and shall conform to the requirements for suspended signs, projecting signs or freestanding signs, depending on the method of installation and support. 	

SIGNS ALLOWED IN ALL DISTRICTS WITHOUT A SIGN PERMIT**B. Construction Signs**

A sign that identifies architects, engineers, contractors and other individuals or firms involved with construction on the premises, the name of the building or development, the intended purpose of the building, and/or the expected completion date.

Standards

1. In single-family residential districts on projects not involving multiple lots, such signs shall not exceed six square feet in area and four feet in height and are limited to one per lot.
2. In all other circumstances, such signs shall not exceed 32 square feet in area and eight feet in height, except in the DD District where such signs shall not exceed:
 - (a) 10% of the building facade area along the street frontage location or 120 square feet in area, whichever is less; and
 - (b) Eight feet in height.
3. The sign shall be removed prior to the issuance of a Certificate of Compliance.
4. Construction signs in accordance with this section are permitted at a maximum rate of one sign per 50 continuous linear feet of construction fence.
5. Where there is no construction fencing, the number of signs allowed shall be one per street frontage.

**C. Customary Identification Signs**

Signs such as building numbers, addresses, private parking signs, no trespassing signs or dangerous animal signs.

Standards

Such signs shall not exceed three square feet in area per sign.





**D. Directional Signs For Sale or Rent of Residential Property**

Signs that provide directional information regarding the sale or lease of residential property.

Standards

1. The signs contain only directional information [i.e., directional arrows, "left 100 yards", "2nd right", etc.] and "house for rent", "open house", "new house(s) for sale" or the name of the project. Other information such as the name of a builder or real estate company is prohibited.
2. The signs shall be temporary signs on white background, unlit, and limited to 2 square feet per side for a single user. The sign message may be placed on each side of the sign. The signs shall not exceed 4 feet in height and shall not obstruct vision clearances.
3. In order to avoid the placement of a series of signs along several miles of roadway, no more than 5 signs shall be allowed per project, or per property when a single dwelling is for sale or rent. Signs shall be placed no farther than one mile from the project or property for which directions are given.
4. Each user is allowed only 1 sign per intersection.
5. Signs for properties for sale or lease shall be removed when a contract is closed on the last property for sale or lease in the project.
6. To encourage assistance in compliance with these requirements, the Planning Director, or designee, may notify the Board of Realtors or the Home Builders Association regarding violations of these provisions.



SIGNS ALLOWED IN ALL DISTRICTS WITHOUT A SIGN PERMIT	
E. Farm Signs	
<p>Signs advertising agricultural products grown or produced on the premises of a farm at least five acres in size.</p> <p>Standards</p> <ol style="list-style-type: none"> 1. The signs shall not exceed 16 square feet in area per side and eight feet in height. 2. The number of signs shall not exceed a ratio of one sign per 1000 feet of road frontage of farm property. If more than one sign is allowed, the signs shall be at least 500 feet apart. If the farm property fronts on more than one road, each frontage shall be considered separately. 3. The signs shall be set back at least 10 feet from the right-of-way and at least 50 feet from the intersections so that they do not interfere with vision clearances on roads. 4. The signs shall be removed during seasons when sales have ceased. 5. Agricultural properties that wish to apply for permanent signs may do so by permit under the provisions of Sec. 3.10, Sign Permit, but in that event, additional unpermitted signs shall not be allowed. 	
F. Historic Markers	
<p>A sign indicating the date of construction, the name of the building, the principals involved in its construction, or other historical facts. Historic or memorial markers can be erected by a governmental agency or private, nonprofit historic preservation or education organization, pursuant to a plan or program for the erection of such signs or markers applied on a national, State, or county-wide basis, or to properties within a duly authorized local historic district.</p> <p>Standards</p> <ol style="list-style-type: none"> 1. The plan or program sponsoring the sign shall employ uniform standards of eligibility and the sign or marker shall commemorate a person, building, place or event of historical, civic, cultural, natural historical, scientific, or architectural significance. 2. Each such sign or marker shall be made of cast metal, cut masonry, painted wood, glass, other metal or other similar durable weatherproof material. 3. Building-mounted signs shall not exceed six square feet in area. 4. Freestanding signs shall not exceed 16 square feet in area. 	
G. Home Occupation Signs	
<p>A sign advertising a home occupation.</p> <p>Standards</p> <p>Only one wall sign not exceeding three square feet in area shall be allowed.</p>	
H. Incidental Signs	
<p>An on-premise sign giving information or direction for the convenience and necessity of the public such as "entrance," "exit," "no admittance," "telephone," "parking," etc.</p> <p>Standards</p> <p>Such signs shall not exceed three square feet of area per sign or four feet in height and shall not contain any logos.</p>	

SIGNS ALLOWED IN ALL DISTRICTS WITHOUT A SIGN PERMIT**I. Murals**

An image, such as a painting or enlarged photograph, applied directly to a wall or ceiling.

Standards

1. Murals containing graphics, other than logos or registered trademarks, related to goods and services provided on site are allowed without a permit.
2. Commercial text, logos, or trademarks contained within the mural shall comply with the standards for wall signs within paragraph 11.6.1, Table of Signs Requiring Permits.
3. Mural graphics shall not be included in the sign area calculations when commercial text is included despite paragraph 11.2.2A.2.

J. Public Art Placards

Messages on public art that recognize the artist and/or sponsor and are clearly subordinate to the art.

Standards

Such signs shall not exceed four square feet in area, or five percent of the total square footage of the art, whichever is smaller. For three-dimensional art, the total square footage of the base shall be used to calculate percentage.

K. Public or Non-Profit Announcements

Announcements by public or non-profit organizations of fund raising events, special events or activities of interest to the general public, other than political signs. Events or activities that are typically routine, such as but not limited to hours of operation, weekly worship times, and other similarly repeated activities shall not be construed to meet this standard.

Standards

1. Such signs shall not exceed 32 square feet in area for nonresidential districts and shall be limited to one per event.
2. Such signs shall not exceed six square feet in area for residential uses in residential districts and 25 square feet in area for nonresidential uses in residential districts and shall be limited to one per event, per premise.
3. Within Design Districts, such signs shall not exceed 10 percent of the individual building facade area or 32 square feet, whichever is greater.
4. Signs shall indicate the date(s) of the activity or event.
5. The sign may be erected up to two weeks prior to the event and shall be removed within seven days after the event. However, in no case shall a sign be posted for more than 30 days.
6. (County Only) Within the SRP-C District, such signs shall not exceed 10 percent of the individual building facade area or 32 square feet, whichever is greater.





**L. Public Signs**

Signs erected by the federal, state, or local government, or governmental entity.

Standards

The sign shall contain no commercial logo or message.



SIGNS ALLOWED IN ALL DISTRICTS WITHOUT A SIGN PERMIT	
M. Real Estate Signs on Nonresidential Property, Multifamily Property, or Subdivision	
<p>A sign located on nonresidential property, multifamily residential property, or in one subdivision if applicable to multiple lots and advertising the property for sale, rent, or lease.</p> <p>Standards</p> <ol style="list-style-type: none"> 1. Freestanding signs shall not exceed 32 square feet in area per sign and eight feet in height and shall be limited to one freestanding sign per street frontage. 2. One wall sign per building facade shall be allowed if the entire building is for sale, rent, or lease. Facades with a frontage measuring less than 100 linear feet shall be allowed a wall sign which shall not exceed 16 square feet in area. Facades with a frontage measuring 100 linear feet or more shall be allowed a wall sign which shall not exceed 32 square feet in area. 3. If portions of a building are for sale, rent, or lease, a single wall sign not to exceed eight square feet shall be allowed for each leasable/rentable/salable unit. 4. The signs shall be removed within 15 days after closing or execution of a rental or lease agreement. 	
N. Real Estate Signs on Residential Property (Other than Multifamily Property or Subdivision)	
<p>A sign advertising residential property (except for multi-family dwellings or multiple lots in one subdivision) for sale, rent or lease.</p> <p>Standards</p> <ol style="list-style-type: none"> 1. Such signs shall not exceed six square feet in area and four feet in height for freestanding signs and shall be limited to one sign per street frontage and one wall sign per dwelling unit. 2. The signs shall be removed within 15 days after closing or execution of a rental or lease agreement. 	
O. Traffic Control Signs On Private Property	
<p>Any public notice or warning required by applicable federal, State or local law, regulation or ordinance. Any federal, State or local traffic control or other public sign when located on private property.</p> <p>Standards</p> <ol style="list-style-type: none"> 1. The face shall meet FHWA <i>Manual on Uniform Traffic Control Devices</i> standards. 2. The sign shall contain no commercial logo or message. 	
P. Vending Machines, Automatic Tellers, Gasoline Pumps	
<p>Signs that display the name, trademark or logo of the company or brand or prices provided the display is an integral part of vending machine, automatic teller machine or gas pump.</p> <p>Standards</p> <p>The sign shall not exceed 32 square feet in area per side.</p>	

SIGNS ALLOWED IN ALL DISTRICTS WITHOUT A SIGN PERMIT**Q. Window Signs**

Signs that are attached to, painted on, or etched into a window or displayed within 12 inches (measured horizontally) of the window and are legible from outside of the window.

Standards

1. Such signs in combination with other window signs shall not exceed 10% of the window area on each facade.
2. Such signs in combination with all other signs on the lot shall not exceed the maximum permitted sign area for the lot.

**R. Yard Sale Signs**

A sign advertising a yard or garage sale.

Standards

1. Yard sale signs shall not exceed four feet in height and six square feet in area per sign.
2. Limited to one sign per lot.
3. Such signs may be erected up to five days prior to the event and shall be removed within two days after the event.



Sec. 11.5 Signs Allowed in Right-of-Way

11.5.1 General

The following signs are allowed within the public right-of-way in all zoning districts. Where such signs are permanent signs, they shall require a license agreement approved by the Public Works Director, or designee) and/or an encroachment agreement approved by NCDOT as applicable. Signs allowed in right-of-way shall meet all other applicable requirements of this Article.

- A. Awning and projecting signs projecting over a public right-of-way.
- B. Emergency warning signs erected by a government agency, utility company, or a contractor doing work in a public right-of-way.
- C. Public signs erected by or on behalf of the City, County, State or federal government.
- D. Signs erected pursuant to a temporary use permit issued by the Planning Director or designee, subject to such ordinances or regulations as may apply.
- E. Signs identifying a recognized community, subdivision or development provided that such signs are consistent with an approved overall sign plan, site plan or subdivision plat. This shall also include signs pursuant to paragraph 11.6.2A.10, Off-Premise Non-Residential Entry Signs.
- F. (City only) Signs erected in connections with elections, referenda, or current political events provided that they do not exceed six square feet per sign in area and are no more than four feet in height. The signs shall be located so as not to obstruct drivers' vision clearances at intersections. Such signs may be posted 45 days prior to an election in which a person identified on the sign is a candidate or item identified on the sign is on the ballot and shall be removed within 15 days after the election or cessation of candidacy of all persons identified on the sign, whichever comes first. Along State rights-of-way such signs may require permits from NCDOT.

11.5.2 Moveable Signs on Sidewalk

- A. A moveable sign shall not be permanently attached in any way to the sidewalk, and shall not be chained or attached in any way to street furniture, other signs, street trees, other landscaping, or other fixtures or appurtenances on or in the sidewalk.
- B. Moveable signs can be located within the street right-of-way only on sidewalks within the CI, CN, CG, MU Districts, and Design Districts and shall not require a permit.
- C. **Standards**
 - 1. Only one moveable sign is allowed per building street frontage and shall only advertise for the business(s) accessed from that frontage.
 - 2. The sign shall be located no more than 10 feet from the main pedestrian entrance. This amount can be increased only by the minimum amount necessary to achieve the minimum width for pedestrian clearance.

3. Pedestrian Clearance

The moveable sign shall be placed to allow at least five feet of sidewalk width for unrestricted pedestrian movement.

4. Each sidewalk sign shall not exceed two and one half feet in width and four feet in height.

5. The sign shall be removed each day by the close of business, and shall be replaced or removed when the appearance or condition of the sign deteriorates.





D. Within the CI, CN, CG, and MU Districts, the additional requirements must also be met:




1. The area shall consist of one or more contiguous blocks where at least 75% of the blockface contains buildings which abut the street sidewalk.
2. At least 50% of the buildings shall have space at the street level which consists of retail stores, shops and restaurants.
3. When the area is located in an historic district overlay, a plan in conformance with the requirements of Sec. 11.8, Elements of Common and Way-Finding Signage Plans, shall be reviewed by the HPC pursuant to Sec. 3.17, Certificate of Appropriateness.



Sec. 11.6 Signs Requiring Permits


11.6.1 Table of Signs Requiring Permits

Upon issuance of a sign permit in accordance with Sec. 3.10, Sign Permit, the following signs shall be allowed subject to the following requirements.

SIGNS REQUIRING PERMITS	
A. Awning Signs	
<p>A sign which is a part of a fabric or other non-structural awning.</p> <p>Standards</p> <p>Awning signs shall be permitted for nonresidential uses and in all nonresidential zoning districts subject to the following requirements:</p> <ol style="list-style-type: none"> 1. The sign shall be flat against the surface of the awning. 2. The sign shall maintain a clearance of 7'-6" above a public right-of-way or required front yard. 3. The sign shall not be closer than two feet, measured in horizontal distance, from the curb line of any street. 4. The sign shall not extend more than five feet into the right-of-way unless a license agreement pursuant to paragraph 11.5.1, General, has been issued. 5. Any fabric awning valance may not extend more than one foot below the rigid mount of the awning. 6. The maximum sign area is 40 square feet per sign. 7. Only one sign is permitted over each door or window. 8. The area of all permitted awning signs shall be included in the area of all wall signs. 	
B. Canopy Signs	
<p>A sign on a permanent, decorative porch or walkway cover other than an awning which is attached to a building or supported by columns extending to the ground.</p> <p>Standards</p> <ol style="list-style-type: none"> 1. Canopy signs shall be permitted on nonresidential uses subject to the following requirements: 2. The maximum sign area per canopy face is 12 square feet. 3. The vertical edge of the canopy sign shall be a maximum of two feet in height, except for fuel canopies, where the maximum vertical edge of the canopy may be 42 inches. 4. In no case shall the sign extend beyond the vertical edge of the canopy to which it is attached. 5. The sign area used for the computation of sign size shall be deducted from the allowable square footage for wall signs. 	
C. Freestanding Signs	
<p>There are two types of freestanding signs:</p> <ol style="list-style-type: none"> 1. Monument Signs A freestanding sign constructed on the ground with a continuous footing or foundation with the base of the sign at grade level. 2. Pylon Signs A freestanding sign permanently affixed to the ground by one or more supports. 3. Standards Standards for freestanding signs are pursuant to paragraph 11.6.2, Standards for Freestanding Signs. 	 <p>Monument Sign</p>  <p>Pylon Sign</p>

SIGNS REQUIRING PERMITS	
D. Marquee Signs	
<p>Signs/message areas on a permanent roof-like structure projecting over an entrance of a building (marquee).</p> <p>Standards</p> <ol style="list-style-type: none"> 1. Marquee signs shall be allowed in all non-residential districts, including MU, UC, and DD Districts, subject to the following conditions: 2. The marquee shall maintain a vertical clearance over a sidewalk of at least 7'-6". 3. The marquee shall be no closer than two feet, measured in horizontal distance, from the curb line of any street. 4. The message area may extend the full length of the marquee. 5. The message area shall not exceed eight feet in height. 6. The message area shall not exceed 200 square feet in area, except in the DD District where it shall not exceed 350 square feet in area. 7. Only one marquee sign shall be allowed per establishment. 	
E. Projecting Signs	
<p>A sign forming an angle with a building which extends from the building and is supported by the building.</p> <p>Standards</p> <p>Projecting signs shall be allowed on all nonresidential uses, subject to the following conditions:</p> <ol style="list-style-type: none"> 1. The sign shall not extend above the top of the wall to which it is attached, except that a sign 18 inches or less in width and perpendicular to such wall may extend up to a maximum of two feet beyond the top of the wall. 2. The sign shall maintain a clearance of 7'-6" above a public right-of-way or required front yard. 3. The sign shall not extend into a required front yard more than six feet or into a public right-of-way more than 4.5 feet unless a license agreement pursuant to paragraph 11.5.1, General, has been issued. 4. The sign shall not exceed 40 square feet in area. 5. Only one sign shall be permitted per establishment, except that an establishment in a Design District with more than one street frontage may have one sign per street frontage. 	
F. Roof Signs	
<p>A sign that is higher than the highest point of the roof to which it is attached. Signs that do not extend above the roof, but are attached to the lower slope of a roof or attached to a parapet wall above a flat roof are considered wall signs. Signs that do not extend above the highest point of the roof, even if attached to mansard or canopy roofs are considered wall signs.</p> <p>Standards</p> <p>Roof signs shall be allowed subject to the following regulations:</p> <ol style="list-style-type: none"> 1. Roof signs are allowed only in the MU District and Downtown Tier. 2. Roof signs shall be allowed by right on buildings of five stories or more. 3. Roof signs on buildings with less than five stories are allowed through the approval of a Design Special Use Permit, pursuant to Sec. 3.9, Special Use Permit. 4. The maximum sign area shall be 15% of the building facade area that is on the same building elevation as the sign. The amount of sign area devoted to roof signs shall be deducted from the allowable wall sign square footage. 	

SIGNS REQUIRING PERMITS	
G. Suspended Signs	
<p>A sign that is attached to the underside of a horizontal plane or arm and is supported by the horizontal plane.</p> <p>Standards</p> <p>Suspended signs shall be permitted in all zoning districts, subject to the following regulations:</p> <ol style="list-style-type: none"> 1. The sign shall be no closer than two feet, measured in horizontal distance, from the curb line of any street. 2. The sign shall maintain a vertical clearance over a sidewalk of at least 7'-6". 3. The sign area shall not exceed 3½ square feet. 4. Only one sign shall be allowed per establishment or per exterior wall per establishment. 	
H. Temporary Signs	
<p>Any sign which is intended for temporary use and not permanently mounted. The sign shall relate to a special event or temporary situation, not a routine business activity.</p> <p>Standards</p> <p>Temporary signs shall be allowed in every district, subject to the following requirements:</p> <ol style="list-style-type: none"> 1. The sign may be erected up to two weeks before the event and shall be removed within seven days after the event. However, in no case shall a sign be posted for more than 30 days. 2. The sign area shall not exceed 32 square feet except in the Design Districts, where the sign area shall not exceed 32 square feet or 10% of the square footage of the building facade area on one street frontage, whichever is larger. 3. Only one sign shall be allowed per business per special event and shall include the date(s) of the event in the sign copy. 4. Each business site may be issued two sign permits for a temporary sign within a 12-month period. Each 12-month period shall begin with the issuance of the first permit and shall expire 12 months from that date. 5. Construction information, or sales, rental, or leasing information, must meet the standards of paragraphs 11.4.2, 11.4.13, and 11.4.14 as applicable. 6. Exception for Downtown Design District: Signs on vacant buildings that drape the building facades or cover the windows, and that display only decorative graphics or public art, shall be allowed with no maximum square footage, number, or duration. Such signs shall be removed prior to occupancy. 7. (County Only) Within the SRP-C District, the sign area shall not exceed 32 square feet or 10% of the square footage of the building facade area on one street frontage, whichever is larger. 	

SIGNS REQUIRING PERMITS	
I. Wall Signs	
<p>Any sign, other than a projecting sign, which is permanently attached to or painted on any wall of a building. A sign attached to the lower slope of a mansard or canopy roof, or a sign affixed to or forming an awning or a canopy, shall be considered a wall sign for purposes of this Ordinance. For purposes of this section only, a "wall" shall include any permanent architectural extension of a wall, including parapets, unless that extension serves solely as the framing for a sign support structure or sign face, even if such extension projects beyond or above the enclosed portions of the building. For signs that extend above the roof see "Roof Signs."</p> <p>Standards - Nonresidential Districts Wall signs shall be subject to the following requirements in nonresidential districts:</p> <ol style="list-style-type: none"> 1. The sign shall not extend more than 12 inches from the wall of the building, except in the case of a sign on the lower slope of a roof or a canopy roof, where the sign may extend the distance required to make the sign vertical. 2. The sign may extend up to 12 inches into a public right-of-way. 3. The sign may not extend beyond the edges of the wall to which it is attached, except when the sign is contiguous on two adjacent walls of the same building, the connecting portion may extend to but not beyond the face of the adjoining portion. 4. The sign may not prevent the free entrance and exit from any window, door or fire escape. 5. Wall signs may not exceed 15% of the wall area in size. Where the area of the wall is less than 167 square feet, a minimum of 25 square feet of wall sign area is allowed. 6. The total sign area shall be the sum of all signs on the wall including signs on the wall surface, signs affixed to the wall parallel and in the same plane as the wall, signs on awnings or canopies, window signs, door signs, signs on the lower slopes of roofs or canopy roofs, and signs on parapets above roofs. 7. The sign shall only have one face, regardless of the proposed angle of separation of proposed faces. <p>Standards - Residential Districts Wall signs in residential districts shall be subject to the following requirements: Nonresidential uses permitted in residential districts and all multifamily developments shall be allowed one wall sign per building, provided the sign does not exceed 15% of the wall area; however, a minimum of 25 square feet of sign area shall be allowed.</p>	

11.6.2 Standards for Freestanding Signs**A. Design Districts, and Nonresidential Districts and Uses**

Freestanding signs shall be permitted in Design Districts, nonresidential zoning districts, and for non-residential uses in residential zoning districts subject to the following requirements.

1. Height**a. Monument Sign**

The distance from the ground to the highest point of the sign shall be not more than six feet.

b. Pylon Sign

The distance from the ground to the highest point of the sign shall not exceed 16 feet, except for nonresidential uses in residential districts or in the MTC Overlay (Sec. 4.9), where the sign height shall not exceed 12 feet.

c. Exemption

A pylon sign up to 40 feet in height for restaurants, hotels, motels, or fuel sales establishments is allowed when:

- (1) The property is within 400 feet of the right-of-way of a controlled access highway;
- (2) The property is either adjacent to, or within 150 feet of, an interchange providing access to the controlled access highway; and
- (3) The property is not located in a Design District or MTC Overlay.

2. Number

- a. One freestanding sign shall be permitted on each street on which the property fronts.
- b. Except within Design Districts, additional signs are allowed in a development with an approved common signage plan for a street frontage that exceeds 300 feet. If multiple signs are placed on a single street frontage, no individual sign shall exceed 80 square feet in area and there shall be a minimum of 150 feet between the signs.

3. Area**a. Sign Area in Nonresidential Districts**

Individual signs on each street frontage of a property shall not exceed 32 square feet in area when the frontage is less than 150 feet, and shall not exceed 80 square feet in area when the frontage is 150 feet or more.

b. Sign Area of Nonresidential Uses in Residential Districts

- (1) For lots with a frontage of less than 150 linear feet, the sign shall not exceed 12 square feet in area.
- (2) For lots with a frontage of 150 linear feet or more, the sign shall not exceed 32 square feet in area.

c. Sign Area in Design Districts

Freestanding signs shall not exceed 32 square feet in area.

4. Location

- a.** Freestanding signs shall not be placed within the MTC buffer area but may be placed within other landscaped areas.
- b.** Freestanding signs shall not be located within any sight distance triangles.
- c.** (County Only) Within the SRP-C district, freestanding signs shall not be allowed along the frontage of an interstate or freeway right-of-way.

5. Setback

- a.** If the sign height is six feet or less, or within a Design District, there shall be no minimum setback required from the property line.
- b.** If the sign height is over six feet:
 - (1) For sign areas of 32 square feet or less, a minimum setback of five feet from all property lines shall be required, except that a minimum setback of 12 feet from adjoining residential properties shall be required.
 - (2) For sign areas of more than 32 square feet, a minimum setback of 10 feet from all property lines shall be required, except that a minimum setback of 12 feet from adjoining residential properties shall be required.

6. Design Standards

- a.** Except for signs located within Design districts, pylon sign supports shall consist of at least 30% of the total sign width; each single support shall consist of at least 15% of the total sign width.
- b.** Within Design Districts, freestanding signs shall incorporate the following design standards:
 - (1) All freestanding signs shall have three-part design as follows:
 - (a) Monument signs shall be composed of a decorative base, sign face, and cap.
 - (b) Pylon signs shall be composed of a decorative base, support, and sign face.
 - (2) Signs and sign support material shall be constructed of metal, painted or stained non-pressure-treated wood, masonry, fabric, glass, ceramics, or concrete.
 - (3) Fasteners used for securing the sign to the ground shall be obscured by covers.
 - (4) Proportion
 - Pylon signs shall be proportionally taller than they are wide.

7. Landscaping

Except within Design Districts, freestanding signs shall incorporate the following landscaping requirements.

- a. A defined landscaped area shall be provided at the base of the sign. The required landscaped area shall be parallel to the face of the sign. The required landscaped area shall be at least 50 square feet in area. For signs with multiple faces, the landscaped area shall be allocated so that a portion of the required landscaping is located in front of each sign face.
- b. The required landscaped area shall contain materials such as, but not limited to, vegetative ground covers, perennials, shrubs, and ornamental trees covering at least 50% of the defined landscaped area at maturity. Paving and artificial plant materials shall not be included in fulfilling this requirement. A plan of the landscaped area with the name, quantity, and spacing of plant materials shall be included as a part of the sign permit application.

8. Medical Center Signs

Additional freestanding signs for medical facilities containing 250 beds or more shall be allowed subject to the following limitations. Unless explicitly altered below, all other applicable standards shall apply.

- a. The information contained on the sign shall relate to medical facility services.
- b. Each sign shall not exceed 12 feet in height and 50 square feet in area;
- c. The number of signs allowed shall not exceed a ratio of one sign per 150 feet of medical facility property street frontage measured on the street on which the signs are to be located; and
- d. All signs associated with the medical facility shall be approved as part of a common signage plan in conformance with the requirements of Sec. 11.8, Elements of Common and Way-Finding Signage Plans.

9. Way-Finding Signs

- a. Way-finding signs are allowed along a right-of-way internal to a unified development complex, as demonstrated through a development plan or approved site plan(s), even if the property is subdivided and has various owners.
- b. Signs shall function solely for the purpose of providing directional information along rights-of-way from recognized sub-sections, tenants, or areas of the development to other recognized sub-sections, tenants, or areas of the development. Referenced sub-sections, tenants, or areas can be located on different parcels other than the parcel where the sign is located.
- c. Unless explicitly altered below, all other applicable standards shall apply. Way-finding signs located internally within a property and not visible from right-of-way are exempt from the following standards.
 - (1) The information contained on the sign shall provide direction to the sub-sections, areas, or tenants within the development.
 - (2) Each sign, including supports, shall not exceed six feet in height.

- (3) The maximum sign area per side shall be 16 square feet.
- (4) Sign area shall not count towards the aggregate sign area allowed for the development, unless a specific tenant is listed on the sign.
- (5) Signs shall be located along right-of-way that is interior to the unified development, and not visible from outside of the unified development.
- (6) No setback is required. Signs and sign supports shall not intrude or be located within right-of-way.
- (7) The number of signs allowed shall not exceed a ratio of one sign per 500 linear feet of property street frontage measured along the right-of-way on which the signs are to be located.
- (8) All way-finding signs shall be approved as part of a way-finding signage plan in conformance with the requirements of paragraph 11.8.2, Elements of a Way-Finding Signage Plan.
- (9) Changeable copy is prohibited.

10. Off-Premise Non-Residential Entry Signs

An off-premise, freestanding non-residential sign is allowed as an entry sign for a unified development complex, as demonstrated through a development plan or approved site plan(s), even if the property is subdivided and has various owners. Unless explicitly altered below, all other applicable standards shall apply.

- a. Signs shall be located on a property that is part of the development, within right-of-way that serves the development as allowed in Sec. 11.5, Signs Allowed in Right-of-Way, or on a parcel adjacent to the development tract that is zoned non-residential or multifamily.
- b. A sign shall be allowed only at each entry to the development, and only along public right-of-way that serves as internal access to the development.
- c. The sign shall be at least 300 feet from other freestanding signs that serve the development.
- d. A sign pursuant to paragraph 11.5.1E is not permitted at the same entry.
- e. Signs shall be included within the common signage plan for the development, as applicable.
- f. The signs may only include the development name and tenants of the development.
- g. The sign may list tenants of the development that are not on the same parcel as the sign.
- h. Tenant signage shall count towards the aggregate sign area per paragraph 11.2.2A.4 and paragraph 11.2.2B, Aggregate Sign Area.
- i. A tenant listed on the non-residential entry sign shall not maintain a separate, individual freestanding sign if the entry sign is located on the same parcel as the tenant, or if the individual tenant sign is located within 150 feet of the entry sign.

- j. A sign easement shall be recorded for the location(s) of entry signs prior to the issuance of a sign permit.
- k. Changeable copy is prohibited.

B. Residential Identification Signs

1. Residential Subdivisions

Up to two freestanding signs may be placed at each entrance to identify the subdivision. Each sign shall be limited to six feet in height and 12 square feet in area. Signs shall be incorporated into a permanent landscape feature such as a wall or masonry column.

2. PDR Districts and Multifamily Developments

Up to two freestanding signs may be placed at each entrance to identify the project. Each sign shall be limited to six feet in height and the total sign area shall not exceed 32 square feet in area for a single sign and 16 square feet each if two signs are used. The sign shall be incorporated into a permanent landscape feature such as a wall or masonry column.

Sec. 11.7 Landmark Signs

11.7.1 Privileges

Signs which have been officially designated as Landmark Signs pursuant to Sec. 3.16, Historic District or Landmark Designation, and which retain those dimensional, locational, and lighting standards that the sign possessed when it received such a designation shall enjoy the following privileges.

- A.** Shall be allowed to remain on roofs or exceed height limits found elsewhere in this Article.
- B.** Shall be allowed to exceed dimensional limits found elsewhere in this Article.
- C.** Shall be allowed to reference a product or business which is not related to the existing business on the property.
- D.** Shall not, if the sign is not related to an existing business, have the sign area deducted from the square footage of sign area granted by other standards of this Article.
- E.** Shall be allowed to remain in a right-of-way unless it becomes a hazard to traffic.
- F.** Shall be allowed to retain its original lighting patterns and materials.

11.7.2 Regulations

The following regulations shall apply to signs which have been designated as Landmark Signs.

- A.** The voluntary removal of a Landmark Sign by an owner shall be allowed.
- B.** Alterations to a Landmark Sign shall not be allowed without the issuance of a Certificate of Appropriateness by the Historic Preservation Commission using the criteria used in Sec. 3.17, Certificate of Appropriateness.

Sec. 11.8 Elements of Common and Way-Finding Signage Plans

11.8.1 Elements of a Common Signage Plan

The common signage plan shall consist of five elements:

A. Location

Identification of sign locations on buildings or property.

B. Materials and Illumination

Description of the type of sign and sign materials, including construction materials and proposed lighting if any.

C. Size

1. Itemization of sign size or band area at identified locations.
2. Allocation of sign area for multi-tenant structures may favor one tenant or series of tenants over another, provided the property owner identifies the available sign area per tenant.

D. Letter Style

1. Description of dominant letter style and letter height to be used on the signs.
2. The Planning Director, or designee, may allow deviations to the lettering style of proposed or existing common signage plans to accommodate state and federally registered trademarks (logos) if the Planning Director, or designee, determines that the intent of the common signage plan requirements will be maintained. In allowing deviations, the Planning Director, or designee, may limit the logo size.

E. Color

1. Listing of the colors to be used on each sign.
2. A maximum of three colors plus either black or white are allowed in a single common plan. Any neon lighting for building signage shall be matched to an approved color specified on the signage plan in order to be included as a part of the color scheme.

11.8.2 Elements of a Way-Finding Signage Plan

A. Location

All proposed locations along right-of-way within the development shall be identified.

B. Sign and Type

Sign sizes and types to be used shall be identified.

C. Font, Symbols, and Color

Fonts, symbols, and colors to be used shall be identified and meet the following criteria:

1. A maximum of two fonts can be used; one for the overall development name and one for the names of sub-sections or tenants of the development.
2. A maximum of two font sizes can be used; one for the overall development name and one for the sub-sections or tenants of the development.

3. If a unified development has both a common signage plan and a way-finding signage plan, the same fonts shall be used in both plans.
4. The following logos or symbols are permitted:
 - a. Logo associated with the name of the unified development.
 - b. Directional arrows.
5. A maximum of three colors plus either black or white are allowed. If a unified development has both a common signage plan and a way-finding signage plan, the same colors shall be used within both plans.

D. Lighting and Materials

The lighting and materials to be used shall be indicated.

11.8.3 Approval Procedure

The approval procedure for common and way-finding signage plans is set forth in Sec. 3.11, Common and Way-Finding Signage Plans.

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Article 12 | Infrastructure and Public Improvements

Sec. 12.1 Improvement Requirements

12.1.1 General

A. Applicability

The requirements of this Article shall apply to all development required to submit site plans or plats, unless expressly exempted by the language of the sections below.

B. Mitigation

The approving authority can require on- and off-site improvements to mitigate the impacts of the proposed development.

C. Clearing and Grading

1. All property required to be dedicated, reserved or otherwise set aside and identified on the approved site plan or preliminary plat shall be surveyed, staked, and appropriately marked and protected prior to beginning clearing and grading work.
2. All clearing and grading work shall be in conformance with the approved site plan or preliminary plat.

D. Floodplains

Base floodplain elevation data shall be provided for all development proposals that are impacted by a floodplain as required by Sec. 8.4, Floodplain and Flood Damage Protection Standards.

E. Compliance

Prior to any land disturbing activity, the applicant shall comply with all Federal, State, and local permitting requirements.

F. Utility Lines and Drainage Channels

Such facilities shall be located in groupings and with the least possible disturbance to existing trees to the maximum extent allowed by sound engineering practices, as determined by the Public Works director or designee.

12.1.2 Survey Monuments and Markers

Permanent survey monuments and markers shall be installed in accordance with N. C. General Statutes 39-32 and 47-30, as supplemented by City/County and N. C. Department of Transportation requirements.

12.1.3 Public Facility Sites

When a proposed site for any public facility, including but not limited to schools, or other public use sites, is shown on an adopted plan, the site shall be reserved and/or dedicated in accordance with paragraph 3.6.7E, Reservation of Public Facility Sites and Lands. Such sites shall receive credit for density purposes of 50% in residential developments.

12.1.4 Required Easements

- A.** Storm drainage and utility easements for water, sanitary sewer, electricity, gas and communications improvements shall be provided in the location and to the width as required by the provider.
- B.** Easements for other purposes, including but not limited to trails and greenways, scenic views, historic preservation, cemetery access, and unique natural sites, shall be designed for reservation or dedication as appropriate.
- C.** All site plans and plats shall exhibit standard easement notes stating the type and purpose of the easement along with a list of prohibited uses/activities within the easement.
- D.** Any cross access agreement shall specify maintenance responsibilities and require that access be unrestricted. The agreement and a plat depicting the easement shall be recorded. Copies of the recorded documents and an attorney certification that the requirements of this paragraph have been met shall be provided to the Planning Director or designee.

Sec. 12.2 Ingress and Egress Requirements

12.2.1 Dedicated and Publicly Maintained Streets

Dedicated and publicly maintained streets shall be required for development in all districts except as described in paragraph 12.2.2A, Private Streets or Roads. An unlimited number of building permits can be issued for land parcels adjacent to a public street that is not maintained by either the City or NCDOT. However, no occupancy permits shall be issued unless the street has been accepted for maintenance by the City or NCDOT, as appropriate, or the construction has been certified to be acceptable for maintenance by the City or NCDOT, as appropriate, or a surety instrument has been posted in an amount adequate to complete construction to the satisfaction of the City Public Works Director or NCDOT, or appropriate designees. For streets outside the corporate limits, the applicant shall request NCDOT maintenance as soon as the NCDOT occupancy requirement is met; not more than twice the minimum number of units required for maintenance by NCDOT shall be issued Certificates of Occupancy prior to acceptance for maintenance by NCDOT.

12.2.2 Other Forms of Access

No building shall be erected or enlarged on a parcel in any district unless such parcel abuts upon or has access to a publicly-accepted and maintained street, except in the following circumstances.

A. Private Streets or Roads

Private streets or roads are allowed in the following circumstances. Such streets shall be designed and constructed according to Public Works Department or NCDOT standards.

1. Residential

- a. For up to six single-family detached or duplex lots. Lots permanently protected as open space, on which no development rights remain, shall not be counted in determining the number of lots on a private street;
- b. For multifamily developments or multifamily areas of development;
- c. If shown on an approved development plan as private streets; or
- d. Within Conservation Subdivisions designed and established pursuant to paragraph 6.2.4, Conservation Subdivision.

2. Nonresidential

For any nonresidential development in a nonresidential district.

B. Ingress/Egress/Regress Easements Other than Private Streets

Ingress/egress easements not involving construction of a private street shall be permitted in the following circumstances:

1. In the Rural Tier

Easements shall be allowed for the construction of one single-family residence on an existing lot of record as of September 16, 1996. The parcel shall not be further subdivided.

2. Other than in the Rural Tier

a. Ingress/Egress/Regress Easements of Record

Ingress/egress/regress easements of record that were recorded as of September 16, 1996, can continue to serve as access.

b. Driveways

A driveway shall be allowed for vehicular access to multiple parcels or lots within a townhouse development or shopping center, even if those parcels or lots are individually owned. Any such driveway within a townhouse development shall be located entirely in a common area.

12.2.3 Acceptance by City of Private Streets

Prior to acceptance by the City, any private street, or any driveway allowed for access within a townhouse development or shopping center under paragraph 12.2.2B.2.b. above, that is not constructed and maintained to City or NCDOT street standards shall be improved to City street standards.

12.2.4 External Access Required

- A.** Except in the Downtown Tier, external motor vehicle access to development shall be provided as indicated below. In determining the number of access points that shall be required, the cumulative impacts of prior developments on the roads shall be considered.
 - 1.** For developments with 90 or fewer dwelling units, at least one point of access to the roadway network shall be provided.
 - 2.** For developments with 91 or more dwelling units, at least two points of access to the roadway network shall be provided.
- B.** A divided entrance shall count as one point of access.

Sec. 12.3 Streets

12.3.1 Street Layout

Within any proposed development, the proposed street layout shall be coordinated with the existing and planned street system of the surrounding area, with respect to location, alignment, and cross-section. Street design shall satisfy the minimum requirements of the City Public Works Director, City Transportation, NCDOT, or applicable designees.

A. Right-of-Way

1. A proposed right-of-way shall be of sufficient width to accommodate the required cross section of the roadway. In no case shall the proposed right-of-way be less than the currently adopted standards by the City or NCDOT, as applicable.
2. Right-of-way shall be dedicated and/or reserved and improvements installed to City or NCDOT standards for each class of street as follows:
 - a. **Freeways**

The entire right-of-way shall be reserved for future acquisition and improvement by the public.
 - b. **All Other Public Streets**
 - (1) **New Streets.** The right-of-way required to accommodate the proposed development shall be dedicated, with the remainder reserved. The applicant shall be required to install improvements sufficient to service traffic demands of proposed development.
 - (2) **Existing Streets.** The applicant shall dedicate or reserve additional right-of-way and install improvements as required to serve proposed development. Other improvements shall be installed according to the City Public Works Reference Guide for Development or NCDOT standards, as applicable.
3. Right-of-way dedication shall be for the purposes of conformance to adopted plans or for the accommodation of other public purposes such as but not limited to streets, sidewalks, bicycle facilities, and utilities. Dedication of right-of-way that does not satisfy, or aid in satisfying, an identified public purpose shall not be shown or approved on any applicable site plan or plat.

B. Grades and Curves

Proposed streets shall be designed in accordance with the standards and specifications of the City Public Works Department or NCDOT, as applicable.

C. Intersections

1. Street intersections shall be as nearly at right angles as possible with no intersection angle less than the minimum established by the City Transportation Department or NCDOT, as applicable.
2. Offset intersections shall only be allowed on streets which cannot be aligned, and shall be separated by a minimum distance determined by the City Transportation Department

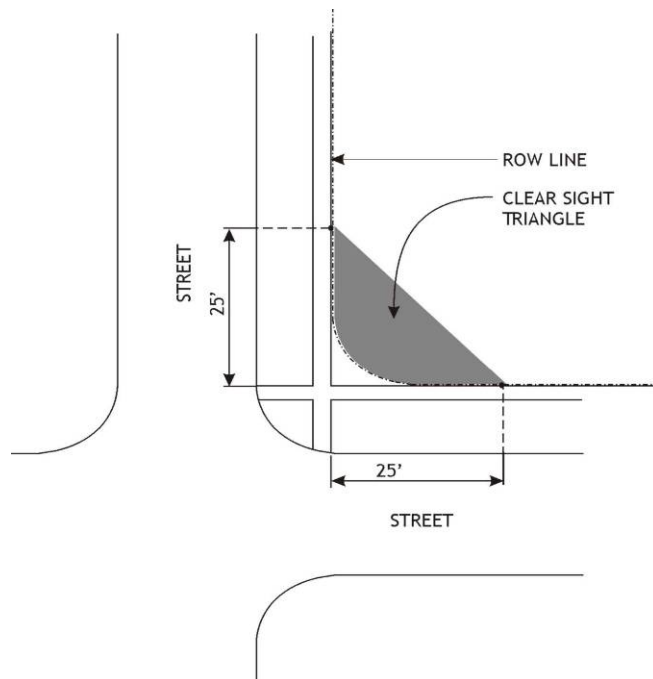
or NCDOT, as applicable, considering possible signalization, necessary storage, and sight distance, as well as other design constraints.

3. Adequate sight distances shall be provided at all intersections between streets and at driveway intersections with streets.
4. Property lines at corners of all intersecting streets shall, as a minimum, be established as the hypotenuse of a triangle with each leg having a length of at least 20 feet or as required by the City Transportation Department or NCDOT along both street rights-of-way.

D. Sight Triangles

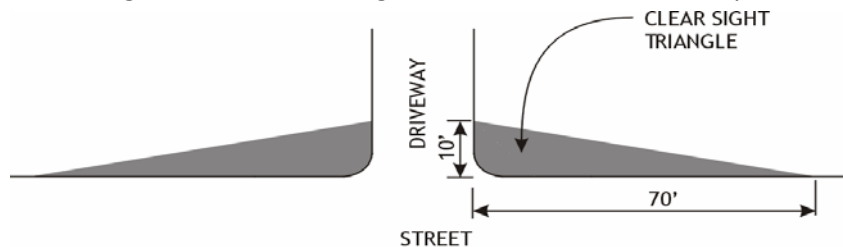
1. Corner Lots

On any corner lot, a sight triangle shall be established. The sight triangle shall be formed by extending lines from the intersections of two streets (measured from the edge of the right-of-way) to points 25 feet from the corner of the rights-of-way of the intersecting streets and then connecting the two points.



2. Driveways

For any driveway, a sight triangle measuring ten feet from the back of curb and extending 70 feet from the edge of each side of the driveway shall be required.



3. Design Standards

Within the sight triangle, no materials which would impede traffic visibility shall be allowed. Structures, fences and plant materials that extend into the sight triangle between two and one half feet and eight feet in height, as measured from the grade of the street or drive, shall not be allowed.

4. Alternative Dimensions

Alternative dimensions shall be approved by the City Transportation Director or designee if the proposed dimensions will function as adequately as or better than standard Ordinance dimensions. The alternative dimensions shall be sealed by a registered engineer with expertise in street design, and designed utilizing the following criteria based upon industry standards such as, but not limited to, *A Policy on Geometric Design of Highways and Streets* by the American Association of State Highway and Transportation Officials (commonly known as the AASHTO green book); *Traffic Engineering Handbook* by the Institute of Transportation Engineers; or *Roundabouts: An Informational Guide* by the U.S. Department of Transportation Federal Highway Administration.

- a. Street width;
- b. Posted speed limits;
- c. Stopping position;
- d. Field obstructions;
- e. Horizontal and vertical curves;
- f. Travel direction (one-way vs. two-way streets); and
- g. Traffic control measures (signals, roundabouts, etc.).

E. Cul-de-sac Streets

Cul-de-sac streets shall not be longer than 800 feet and shall be terminated by a circular right-of-way having a minimum diameter of 92 feet or an approved alternative turnaround as determined by the City Transportation Director or NCDOT, or appropriate designees. The length of cul-de-sac streets shall be measured from the centerline of the bulb to the edge of pavement at the nearest intersection.

F. Stub Outs

1. Unless exempted below, stub outs shall be required on each side (as defined by each of the cardinal directions) of a development as follows:
 - a. **Rural Tier.** At least one stub out for every 2,800 linear feet on any single side of the proposed development.
 - b. **Suburban Tier.** At least one stub out for every 1,400 linear feet on any single side of the proposed development.
 - c. **Urban Tier.** At least one stub out for every 1,000 linear feet on any single side of a proposed development.
 - d. **Projects terminating at the edge of a Tier.** Stub outs at the standard required for the less intense Tier.

2. Stub outs shall not be required if:
 - a. Adjacent existing development has not made any accommodation for such connections; or
 - b. Adjacent sites are permanently protected from development through conservation easements or ownership that precludes development; or
 - c. The only point of access would require crossing floodplains, steep slopes, or other similar natural features; or
 - d. The existing street pattern in the area of the proposed development already provides for vehicular connections at intervals no greater than one-half mile apart in the Rural Tier, one-quarter mile apart in the Suburban Tier, or one-fifth mile apart in the Urban Tier.
3. The proposed street layout in new development shall be coordinated with the existing street system with connections made at all stub outs. Where no full connection can be made as a result of the topography of the site being developed, the developer shall install a cul-de-sac bulb or other turnout facility at the stub out constructed according to the City Public Works Department Reference Guide for Development.

G. Alleys

Alleys shall be permitted and designed in accordance with design criteria established by the City or NCDOT, as applicable.

H. Reserve Strips Controlling Access

The reservation of private property strips of too narrow a depth to permit development as a means of controlling access to public ways shall not be permitted.

I. Frontage Roads and Access Streets

Where a development abuts or contains a controlled or limited access street or thoroughfare, whether existing or proposed, an access street or frontage road shall be required.

12.3.2 Street Names

A. General

1. Street names shall not duplicate nor closely approximate existing street names within the City or County in spelling or pronunciation.
2. Extensions of existing, named streets shall bear the existing street name.
3. The Planning Director or designee shall be the approving authority for street names.

B. Public or Private Streets

1. A street name shall be established for a public street or a private street.
2. Proposed street names shall be included on a final plat.

C. Townhouses and Pedestrian Malls

1. A street name can be established for a driveway allowed for access within a townhouse development under paragraph 12.2.2B.2.b. above, and for a pedestrian mall under paragraph 6.12.2E.1, Pedestrian Malls. Establishing a name shall not result in

circumventing development requirements for private streets, sidewalks, street trees, or other items.

2. Any street name established for a driveway in a townhouse development or for a pedestrian mall shall be included on the final plat or site plan, as applicable. A plat revision or site plan amendment, as applicable, shall be required in order to establish a street name for a driveway within an existing townhouse development or an existing pedestrian mall.

12.3.3 Street Signs and Markers

- A. Standard street name signs shall be installed at one corner of all street intersections, including private streets and named driveways allowed for access within townhouse developments under paragraph 12.2.2B.2.b above. The size, design, materials, location, fabrication, installation, and maintenance of the signs and poles within the public right-of-way and elsewhere shall be in accordance with City Transportation Department or NCDOT standards, as applicable. The developer or owner of a private street or a common area in which a named driveway is located shall be responsible for permanent maintenance as well as fabrication and installation.
- B. Signs denoting the beginning and ending of public maintenance shall also be erected and maintained on private streets and shall be required on named driveways allowed for access within townhouse developments under paragraph 12.2.2B.2.b. above that intersect with the public right-of-way. All such signs shall conform to the street name sign requirements of paragraph A above.
- C. Signs denoting the right-of-way boundaries of dedicated or reserved, unopened streets shall be erected and maintained according to City or County standards.

12.3.4 Street Lights

Street lighting, as required for traffic safety and property security, shall be installed in conformance with City Transportation Department or NCDOT policies, as applicable. The design, materials, location, and installation shall conform to all applicable City Transportation Department or NCDOT standards, and applicable public utility standards, including appropriate separation from street trees.

Sec. 12.4 Pedestrian and Bicycle Mobility

12.4.1 General

- A. Sidewalk, walkway, on-road improvements, and trail systems sufficient to serve both existing and projected pedestrian and cyclist needs shall be labeled on all site and subdivision plans. Such systems shall be designed to connect with all elements within the development, adjacent areas, and transit stops and can include sidewalks along public or private streets, wide outside travel lanes, bike lanes on roadways, and walkways and trails in alternative locations as appropriate. Design, location, dimensions, dedications, easements, and reservations shall conform to applicable City and County policies and plans for sidewalks, bicycle routes, and trails.
- B. Walkways and trails shall be designed to maximize the safety of users and the security of adjoining properties with respect to location, visibility, and landscaping.

12.4.2 Sidewalk Requirement

- A. A sidewalk shall be provided along public or private right-of-way as shown in the table below.

Street Type	Rural Tier	Suburban Tier	Urban Tier	Compact Neighborhood/Downtown Tiers
Freeways	None	None	None	None
Major/Minor Thoroughfare	None	Both Sides	Both Sides	Both Sides
Collectors	None	Both Sides	Both Sides	Both Sides
Nonresidential Street				
At least 2,000 daily trips (post development)	None	One Side	Both Sides	Both Sides
Less than 2,000 daily trips (post development)	None	One Side	One Side	Both Sides
Residential Street	None	One Side	One Side	Both Sides
Cul-de-Sac				
400 or more linear feet	None	One Side	One Side	Both Sides
Less than 400 linear feet	None	None	One Side	Both Sides

- B. Preliminary plats, and developments required to improve existing right-of-way to City or NCDOT standards, as applicable, shall provide public sidewalk within right-of-way pursuant to paragraph 12.4.2A, Sidewalk Requirement.
- C. For all other development except as exempted pursuant to paragraph 12.4.2D, Exemptions, required sidewalk along the right-of-way frontage of the development site shall be provided, as applicable per paragraph 12.4.2A, through only one of the following methods. The following methods shall not be used in combination.
 1. Sidewalk located within the right-of-way or on-site.
 - a. Sidewalk located in right-of-way or on-site shall connect to external sidewalks that extend to the property of the subject development, including connectivity to crosswalks and end of pavement at all adjacent intersections.
 - b. If on-site sidewalks are provided, the sidewalk shall meet the following criteria:

- (1) The sidewalks shall be located within a public access easement;
- (2) The maximum distance from the right-of-way, measured to the closest edge of the sidewalk to the right-of-way, shall be 20 feet; and
- (3) Lighting per Sec. 7.4, Outdoor Lighting, shall be provided either by proposed or existing on-site lighting, or street lights within the right-of-way.

2. Payment-in lieu (City only)

- a. Payment-in-lieu of constructing required sidewalk shall be made at the rate set by the City Council.
 - b. In order to accommodate future sidewalk, a recorded public access easement shall be provided along frontage of the subject property where no sidewalk is proposed if there is insufficient right-of-way to accommodate a sidewalk.
 - c. Payment-in-lieu shall not remove the requirement of sidewalk per paragraph 12.4.2A for future development projects, unless exempt per paragraph 12.4.2D, Exemptions.
- D. Sidewalk shall be provided along common access driveways and areas that serve as ingress/egress for the development site pursuant to paragraph 12.2.2B.2.b, Driveways.**
1. Sidewalk shall be a minimum five feet in width;
 2. Sidewalk shall be placed along both sides of the driveway or area;
 3. Shall be located no more than five feet from the edge of driveway or area; and
 4. Sidewalk shall be constructed of concrete unless a material of equal or better performance is approved by the City Public Works Director, or designee.
- E. Exemptions**
- The following shall be exempt from the installation of public sidewalk:
1. Sidewalk shall not be required when site plan submittals consist of only the following:
 - a. Improvements consist only of unmanned facilities of less than 1,000 square feet, such as storage rooms, mechanical equipment, coolers, or stand-alone ice kiosks;
 - b. Additional motor vehicle parking consisting of less than four spaces;
 - c. Additions of less than 1,000 square feet of building area;
 - d. Improvements that are documented to solely bring existing facilities up to current health, safety, or building code requirements;
 - e. Grading and/or utility improvements; or
 - f. Only requires review by the Planning Department.
 2. Public sidewalk shall not be required when documentation is provided that sidewalk will be provided, through a scheduled and funded City or State roadway project, along the location where sidewalk would otherwise be required.
 3. Sidewalk shall not be required along unimproved right-of-way that is not required to be improved as part of the development project.

F. Alternative Pedestrian Plans

1. Alternative pedestrian plans that are valid as of June 1, 2013, except for those approved pursuant to previous UC District requirements, shall remain valid and can develop sidewalks and/or walkways pursuant to the plan in lieu of sidewalk requirements of this section.
 - a. If aspects of sidewalk development are not addressed within the plan, Ordinance requirements shall apply.
 - b. Plans shall be updated every four years from the date of previous approval to maintain validity, demonstrating areas of completed sidewalks and/or walkways of the plan.
2. Pedestrian plans approved pursuant to previous UC District requirements shall no longer be valid.

G. (County Only) Additional Requirements for the SRP-C District

1. Sidewalk shall be provided along both sides of public or private right-of-way.
2. Along right-of-way with curb and gutter located internal to the development, sidewalk can be provided at the back-of-curb.
3. Sidewalks and other walkways internal to the SRP-C District can be constructed with any all-weather surface material as long as it meets accessibility standards and, if applicable, meets NCDOT standards.

12.4.3 Standards for Pedestrian and Bicycle Facilities

- A. Pedestrian and bicycle facilities shall be clearly marked using NCDOT standard markings, or shall be based on the Manual on Uniform Traffic Control Devices.
- B. Adjacent public greenways shall be connected to pedestrian and bicycle facilities on the site.
- C. Pedestrian and bicycle connections shall be made to any existing or proposed off-site Pedestrian and bicycle facilities.
- D. The minimum width of internal walkways shall be pursuant to all applicable accessibility requirements.

12.4.4 Dimensions and Design

A. Sidewalks

1. In right-of-way with curb and gutter, sidewalks shall be a minimum of five feet in width with a minimum three-foot grass strip between the sidewalk and curb, unless otherwise specified in this Ordinance. Alternative widths can be allowed if permitted pursuant to development guidelines maintained by the City Public Works Director, or NCDOT, as applicable.
2. Conventional sidewalks shall be constructed of concrete unless an alternate material is approved by the City Public Works Director, or Designee.
3. Along strip-paved roads sidewalks shall be located behind the roadside ditch or guardrail.

B. Bicycle Facilities

Either wide outside travel lanes or bicycle lanes, as determined by the City Transportation Director or NCDOT, or appropriate designees, shall be a part of any road improvement made on roadways which are indicated as bicycle routes on the Durham Trails and Greenways Master Plan, the Metropolitan Planning Organization's Transportation Plan, or other adopted bicycle plan.

C. Shared Facilities

Rather than utilize separate pedestrian and bicycle facilities, shared facilities with a 10 foot minimum width are allowed in any area where both sidewalks and bicycle facilities are required, unless separate facilities have been previously developed or approved in the area. Shared facilities of that same width shall be required, however, following the initial installation of shared facilities in the area.

D. Standards

Pedestrians and bicycles shall be accommodated as shown in the table below. All street design standards shall be established by the City Transportation Director or NCDOT, or appropriate designees.

Standard	Rural Tier	Suburban Tier	Urban Tier	Compact Neighborhood/ Downtown Tiers
PEDESTRIAN FACILITIES				
Public sidewalk, 5 feet minimum, all roadways (see paragraph 12.4.2, Sidewalk Requirement)	No	Yes	Yes	Yes
Pedestrian crossing treatment at intersections (marked crosswalk, bulb-out, hot button etc.)	No	Yes	Yes	Yes
Pedestrian routes in parking areas protected from vehicular traffic	No	Yes	Yes	Yes
BICYCLE FACILITIES				
Bike lanes on all thoroughfares, either 4-foot minimum width striped outside gutter edge or 14-foot outside lanes, determined on a case-by-case basis	Yes	Yes	Yes	Yes

Sec. 12.5 Recreation Land

12.5.1 Provisions for both active and passive recreation areas, including parks, greenways, and trails, consistent with adopted policies, plans, and regulations shall be made for all developments. All such land shall be dedicated or reserved and shall satisfy applicable City or County site suitability standards with regard to location, area, and potential use.

12.5.2 Dedication, Impact Fees, and Payment-in-Lieu

A. In the Rural Tier

1. The applicant for a residential development shall be responsible for either:
 - a. Dedicating 1,150 square feet of land for recreation purposes (including active and passive recreation areas, including trails) for each proposed dwelling unit; or
 - b. Making payment-in-lieu equivalent to the tax value of 1,150 square feet of comparable property per dwelling unit.
2. One of the following shall be required:
 - a. Dedication of land; or
 - b. Payment-in-lieu of dedication.

B. Requirements in all Tiers other than the Rural Tier

1. The applicant for a residential development shall be responsible for:
 - a. Paying a recreation impact fee or dedicating 575 square feet of land for parks and active recreation areas for each proposed dwelling unit; and
 - b. Paying a resource based recreation impact fee or dedicating 575 square feet of land for passive recreation areas (including trails) for each proposed dwelling unit. The applicant may make payment-in-lieu equivalent to the tax value of 575 square feet of comparable property per dwelling unit.
2. Where recreation service districts have been established, payments made under this section shall be expended within the respective district from which collected.
3. The following, individually or in combination, shall be required based upon jurisdiction and whether the development is located on the Durham Trails and Greenways Master Plan or the Durham Comprehensive Bicycle Transportation Plan:
 - a. Payment of an impact fee;
 - b. Dedication of land; or
 - c. Payment-in-lieu of dedication.

Sec. 12.6 Railroad Corridors

- 12.6.1** To minimize the loss of existing or former railroad corridors which may have public value as corridors for other forms of transportation, railroad corridors designated for preservation on a plan adopted by a governing body shall be identified on development plans, site plans and subdivision plats.
- 12.6.2** The rail bed and original right-of-way shall be designated for the purpose of dedication or reservation in accordance with requirements for dedication and reservation pursuant to Sec. 12.5, Recreation Land. Dedicated railroad corridors shall reduce the applicant's obligation to dedicate recreation land under Sec. 12.5, Recreation Land, by the amount of the corridor dedicated.
- 12.6.3** Unless agreements have been established that prohibit a railroad crossing, the following shall apply:
- A.** Crossing of the railroad right-of-way shall be permitted for major and minor thoroughfares designated on an adopted thoroughfare plan.
 - B.** No additional at-grade crossings of the corridor by streets or drives shall be allowed, unless a minor special use permit pursuant to Sec. 3.9, Special Use Permit, is approved. In addition to the findings specified in paragraph 3.9.8A, General Findings, the Board of Adjustment shall also find that extreme hardship would result to the property owner due to:
 - 1.** Lack of access; or
 - 2.** Design constraints that severely limit the development potential of the property.

Sec. 12.7 Water and Sanitary Sewer Systems

12.7.1 Water and Sanitary Sewer Systems

A. General

Proposed additions to public systems shall be coordinated with the existing systems and shall satisfy the design and construction standards and specifications of the utility providing the services. Where not otherwise prohibited by local ordinance, community systems, or systems designed to serve more than one user independent of public systems, shall satisfy the standards of the applicable agency responsible for approval.

B. Public

Installation of improvements which are extensions to existing public systems shall be approved by the public utility providing the services. Sanitary sewer systems may be extended into the Rural Tier in the following instances:

1. Through the issuance of a major special use permit pursuant to Sec. 3.9, Special Use Permit, provided that:
 - a. Pump stations are equipped with battery-backed alarm systems connected to an automatic dialer to a 24-hour maintenance service; and
 - b. Provision is made for connection to a portable generator.
2. To serve an existing use or structure for which a health hazard has been documented by the County health department or the State of North Carolina.

The additional requirements of paragraph 8.7.2, General Requirements shall apply in watershed protection overlays.

C. Community

Community systems designed to serve more than one user independent of public systems, may be approved through the issuance of a Major Special Use Permit pursuant to Sec. 3.9, provided that:

1. The system will serve a development that is approved as a Conservation Subdivision pursuant to paragraph 6.2.4, Conservation Subdivision, or that satisfies the design requirements for such subdivisions;
2. The facilities are licensed or permitted by the State of North Carolina, and the system operator is licensed by the State of North Carolina. The licensed operator shall inspect the plant daily with the exception of weekends and holidays to determine that the plant is operating adequately. All monthly reports that are sent to the State of North Carolina shall be copied to the Durham Environmental Health Director;
3. The facilities shall be non-discharge, meet North Carolina reuse standards, including, but not limited to, separating liquids and solids, and have permanent standby power sufficient to ensure normal operation in the event of a power failure;
4. The developer of the system (if a private system) provides a performance bond equal to at least 50% of the cost of the replacement of the system or \$100,000, whichever is greater, in the event that the operator of the system ceases to provide service or maintenance;

5. The developer (or his/her successor) shall provide and maintain catastrophic property insurance to cover 100% of the replacement cost of the system; and,
6. The approving authority makes a finding that the wastewater system proposed by the developer provides improved treatment over what would be provided through the use of an on-site ground absorption or spray irrigation wastewater treatment system.
7. To assist the approving authority in making this finding, the applicant shall provide the approving authority with certifications from the state regarding the performance of the proposed facility relative to on-site systems. If such certification is not available or cannot be provided in a timely fashion, the applicant shall pay for a third party expert technical review of the proposed system to ensure that it will meet this standard.

12.7.2 On-Site Water Supply and/or Wastewater Disposal

Soils evaluation by a qualified soil scientist, early in the approval process, is recommended where the use of individual on-site wastewater disposal systems is anticipated.

Sec. 12.8 Stormwater Management

12.8.1 Stormwater Management

- A.** Any land-disturbing activity may be required to provide stormwater management facilities or make other improvements to the existing drainage system to address water quantity concerns, water quality concerns, or both if the proposed development will increase potential flood damages to existing properties or significantly increase pollutant levels in downstream receiving waters.
- B.** Stormwater management facilities adequate to accommodate a ten-year or greater storm shall be provided that generally follow existing natural drainage systems. Piping and modification of streams and other natural water courses should be minimized and shall be considered on a case-by-case basis to determine if it is necessary and environmentally sound. Such facilities shall be designed, constructed and maintained to minimize flooding, protect downslope properties, preserve water quality, and adequately transport existing and projected stormwater flows.
- C.** Development plans, site plans, and preliminary plats shall require a stormwater impact analysis that complies with the requirements of the City Public Works Director or County Engineer, or appropriate designees, and which determines the impact of the increased stormwater runoff on downstream stormwater facilities and properties.
- D.** The need for stormwater management facilities to address offsite impacts shall be determined by the City Public Works Director or County Engineer, or their designees, as appropriate.

12.8.2 Regulation

- A. City Stormwater**
City stormwater facilities shall be regulated pursuant to the applicable City code.
- B. County Stormwater**
County stormwater facilities shall be regulated pursuant to the applicable County code.

Sec. 12.9 Other Utilities

12.9.1 Installation

- A.** The applicant shall arrange for the coordinated installation of all other proposed utilities, including gas, electricity, and communications improvements, and shall ensure that site plans, preliminary plats, and final plats clearly show all related easements and right-of-way.
- B.** Utilities shall be installed underground for any subdivision requiring preliminary plat approval.

Sec. 12.10 Sedimentation and Erosion Control

12.10.1 Purposes

- A. This Section is adopted for the purposes of:
 - 1. Regulating private, non-exempt land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses and other public and private property by sedimentation; and
 - 2. Establishing procedures through which these purposes can be fulfilled.
- B. No person shall undertake any land-disturbing activity without first obtaining a permit from the Sedimentation and Erosion Control Officer or designee as required by this section.

12.10.2 Applicability

- A. **Exemptions.** The following activities do not require a permit under this section:
 - 1. Land-disturbing activities for the purpose of fighting fires;
 - 2. Land-disturbing activities for the stockpiling of raw or processed sand, stone or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage;
 - 3. Land-disturbing activities that are less than 12,000 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated. Notwithstanding this provision, an erosion control plan and/or permit may be required by the Sedimentation and Erosion Control Officer or designee when off-site damage is occurring, or if the potential for off-site damage exists. Additionally, this section may apply when the applicant, or a parent, subsidiary, or other affiliate of the applicant has engaged in any activity enumerated in paragraph 3.8.7, Disapproval of Plan;
 - 4. As set forth in NCGS § 113A-52.01, land-disturbing activities undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to:
 - a. Forage and sod crops, grain and feed crops, tobacco, cotton and peanuts;
 - b. Dairy animals and dairy products;
 - c. Poultry and poultry products;
 - d. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals;
 - e. Bees and apiary products; and
 - f. Fur animals;
 - 5. Land-disturbing activities undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice

Guidelines Related to Water Quality, the provisions of this Article shall apply to such activity and any related land-disturbing activity;

6. Land-disturbing activities undertaken by persons as defined in NCGS § 113A-52(8) who are otherwise regulated by the provisions of the Mining Act of 1971, NCGS § 74-46--74-68;
7. Land-disturbing activities over which the state has exclusive regulatory jurisdiction as provided in NCGS § 113A-56(a);
8. Land-disturbing activities undertaken for the duration of an emergency, activities essential to protect human life; and
9. This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.

B. Plan Required

Subject to the exemptions listed in subsection 12.10.2, a sedimentation and erosion control plan shall be required for any land-disturbing activity within the County, including the City, if more than 20,000 aggregate square feet will be disturbed, or if 12,000 or more aggregate square feet will be disturbed in a M/LR-A, M/LR-B, F/J-A, or E-A watershed protection overlay district. The Sedimentation and Erosion Control Officer or designee may also require a plan for any land-disturbing activity if it determines that off-site damage is occurring or the potential for off-site damage exists. A plan may also be required when the applicant, or a parent, subsidiary, or other affiliate of the applicant, has engaged in any activity listed in paragraph 3.8.7, Disapproval of Plan.

	Less than 12,000 s.f.	12,000 s.f. to 20,000 s.f.	More than 20,000 s.f.
Plan	MR	MR(*R)	R
Permit	MR	R	R
Plan to District			R

MR - May be required when off-site damage is occurring, the potential for off-site damage exists, or if the applicant or a parent, subsidiary, or other affiliate of the applicant has engaged in any activity enumerated in paragraph 3.8.7, Disapproval of Plan.

R - Required.

***R** - Required in a Lake Michie/Little River Critical Area (M/LR-A), Lake Michie/Little River Protected Area (M/LR-B), Falls/Jordan Critical Area (F/J-A) and Eno River Critical Area (E-A).

C. Protection of Property

Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

D. More Restrictive Rules Shall Apply

Whenever conflicts exist between federal, State or local laws, ordinances or rules, the more restrictive provision shall apply.

12.10.3 Basic Control Objectives

In order for a sedimentation and erosion control plan to be approved, the following control objectives shall be met:

A. Identify Critical Areas

On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention;

B. Limit Time of Exposure

All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time;

C. Limit Exposed Areas

All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time;

D. Control Surface Water

Surface water runoff originating upgrade of exposed areas shall be controlled to reduce erosion and sediment loss during the period of exposure;

E. Control Sedimentation

All land-disturbing activity is to be planned and conducted so as to restrain off-site sedimentation damage; and

F. Manage Stormwater Runoff

When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

12.10.4 Mandatory Standards for Land-Disturbing Activity

No land-disturbing activity shall occur except in accordance with the mandatory standards listed below. Except where more stringent standards are specified in this Ordinance, the technical standards and specifications contained in the North Carolina Erosion and Sediment Control Planning and Design Manual shall also apply.

A. Buffer Zones

Except where more stringent buffer requirements are specified in Article 8, Environmental Protection, and/or Article 9, Landscaping and Buffering, the following requirements shall apply;

1. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity. This subsection shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over or under a lake or natural watercourse; and
2. Unless otherwise provided, the width of a buffer zone is measured from the top of the bank nearest edge of the disturbed area, with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

B. Stabilization of Disturbed Land

The angle for disturbed land shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures.

1. **Ongoing Activity.** Land left exposed shall be planted or otherwise provided with temporary ground cover, devices, or structures sufficient to restrain erosion within the applicable time period after completion of any phase of grading or period of inactivity as follows: seven days for a steep slope; ten days for a moderate slope; 14 days for land with no slope or inclination. For purposes of this section, a moderate slope means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance; and a steep slope means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance. No other criteria apply.

Commentary: The moderate and steep slope definitions in this section are mandated by state law (S.L. 2009-486) for sedimentation and erosion control purposes. This steep slope definition differs from the steep slope definition under UDO Sec. 8.8, Steep Slope Protection Standards, which is otherwise applicable throughout the UDO.

2. **Completed Activity.** For any area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but in no case later than seven days after completion of grading.

C. Stabilization of Sedimentation and Erosion Control Devices

Whenever land-disturbing activity exceeds 12,000 square feet, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of such tract, and shall plant or otherwise provide a temporary ground cover sufficient to restrain erosion generated by such devices and practices within seven days.

- D. Erosion and sedimentation control measures, structures and devices shall be so planned, designed and constructed as to provide protection from the calculated maximum peak of runoff from the 25-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other calculation procedures acceptable to the Sedimentation and Erosion Control Officer or designee.
- E. Each sediment basin or trap in the Suburban or Rural Tier shall have a minimum volume of 3,600 cubic feet per acre of disturbed area and a minimum surface area of 435 square feet per cfs of Q_{25} (25-year storm) peak inflow. Each sediment basin or trap in the Downtown, Compact Neighborhood, or Urban Tier shall have a minimum volume of 1,800 cubic feet per acre of disturbed area and a minimum surface area of 325 square feet per cfs of Q_{25} peak inflow. A skimmer shall be used in each sediment basin or trap.
- F. Sediment basins and traps shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40-micron (0.04mm) size soil particle transported into the basin by the runoff of that two-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or

according to procedures adopted by any other agency of the State or the United States or any generally recognized organization or association.

- G.** Sediment basins and traps shall not be installed in perennial or intermittent streams.
- H.** Existing ponds and lakes shall not be used as sediment basins or traps.
- I.** One party shall retain operational control of any basin or trap. Sold outparcels shall be permitted separately.
- J.** Newly constructed open channels shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization, unless soil conditions permit steeper slopes or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.
- K.** Additional areas may be added per the criteria enumerated in this section only if the basin or trap is properly installed and maintained.
- L.** In high quality water (HQW) zones, uncovered areas shall be limited at any time to a maximum total area of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered with the written approval of the Director of DENR.

12.10.5 Permanent Downstream Protection of Stream Banks, Channels and Slopes

A. Intent

Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

B. Performance Standard

The land-disturbing activity shall be planned and conducted such that the velocity of stormwater runoff in the receiving watercourse at the point of discharge resulting from a 25-year storm after development shall not exceed the greater of:

- 1.** The velocity specified according to the soil type in the following table, for a point of discharge into a receiving watercourse with bare soil or rock banks or bed;

Materials		Maximum Permissible Velocities	
Name	Description	FPS ¹	MPS ²
Fine Sand (noncolloidal)	Cecil fine sandy loam, Pinkston fine sandy loam	2.5	0.8
Sand Loam (noncolloidal)	Appling sandy loam, Creedmoor sandy loam, Helena sandy loam, Mayodan sandy loam, Wedowee sandy loam, Wilkes sandy loam, White shore sandy loam	2.5	0.8
Silt Loam (noncolloidal)	Georgeville silt loam, Herndon silt loam, Lignum silt loam, Roanoke silt loam	3.0	0.9
Ordinary Firm Loam	Iredell loam, Mecklenburg loam, Wahee loam, Davidson clay loam, White Store clay loam-eroded	3.5	1.1
Fine Gravel		5.0	1.5
Stiff Clay (very colloidal)	Iredell-Urban land complex, White Store-Urban land complex, Mayodan-Urban land complex	5.0	1.5
Graded, Loam to Cobbles (noncolloidal)	Tatum gravelly silt loam, Nason stony silt loam, Goldston slaty (channery) silt loam	5.0	1.5
Graded, Silt to Cobbles (colloidal)		5.5	1.7
Alluvial Silts (noncolloidal)	Wehadkee silt loam, Congaree silt loam, Chewacla silt loam, Cartecay silt loam	3.5	1.1
Alluvial Silts (colloidal)		5.0	1.5
Coarse Gravel (noncolloidal)		6.0	1.8
Cobbles and shingles		5.5	1.7
Shales and Hard Pans		6.0	1.8

¹ FPS: Feet per second

² MPS: Meters per second

2. The velocity specified according to the type of vegetation and depth of flow in the following table, for a point of discharge into a vegetated receiving watercourse; or

Vegetatively Protected Watercourses and Point of Stormwater Discharge			
Group No.	Vegetation	Depth of Flow (feet)	Maximum Permissible Velocity
1	Bermudagrass	up to1 greater than 1	4 6
2	Reed canarygrass; Kentucky bluegrass	up to1 greater than 1	3 6
3	Grass and legumes, mixed; Weeping lovegrass	up to1 greater than 1	3 4
4	Annuals: Annual lespedeza (KOBÉ); Sudangrass Small grain: (Rye, Oats, barley); Ryegrass	up to1 greater than 1	2.5 2.5

Notes: Do not use vegetative protection on longitudinal parallel to flow slopes steeper than 10% except for side slopes. Annuals: use only as temporary protection until permanent cover is established.

3. The velocity in the receiving watercourse determined for the ten-year storm prior to development.
- C. If the conditions enumerated in paragraph B, Performance Standard, of this subsection cannot be met, the channel below the discharge point shall be designed and constructed to withstand the expected velocity.

D. Slope Protection

When soils with slopes as indicated in the following table, occur between a point of stormwater discharge and the next confluence of concentrated stormwater runoff, such areas, on- or off-site, shall be protected from accelerated erosion by diverting the stormwater discharge from those soil surfaces. Diversion may include the provision of piped, paved or armored storm drainage facilities.

Critical Soils of Durham County		
ApC	Appling sandy loam	6-10% slopes
CfC	Cecil fine sandy loam	6-10% slopes
CrC	Creedmoor sandy loam	6-10% slopes
DaD	Davidson clay loam	6-10% slopes
GeC	Georgeville silt loam	6-10% slopes
GeD	Georgeville silt loam	10-15% slopes
GIE	Goldston slaty silt loam	10-25% slopes
GIF	Goldston slaty silt loam	25-45% slopes
GrC	Granville sandy loam	6-10% slopes
Gu	Gullied land	Clayey materials
HeC	Helena sandy loam	6-10% slopes
HrC	Herndon silt loam	6-10% slopes
HsC	Herndon stony silt loam	2-10% slopes
IrC	Iredell loam	6-10% slopes
lyC	Iredell-Urban land complex	6-10% slopes
MfC	Mayodan sandy loam	6-10% slopes
MfD	Mayodan sandy loam	10-15% slopes
MfE	Mayodan sandy loam	15-25% slopes
MrC	Mayodan-Urban land complex	0-10% slopes
MrD	Mayodan-Urban land complex	10-15% slopes
MuC	Mecklenburg loam	6-10% slopes
NaD	Nason silt loam	10-15% slopes
NaE	Nason silt loam	15-25% slopes
NoD	Nason stony silt loam	10-15% slopes
PfC	Pinkston fine sandy loam	2-10% slopes
PfE	Pinkston fine sandy loam	10-25% slopes
TaE	Tatum gravelly silt loam	15-25% slopes
Ur	Urban land	
WmD	Wedowee sandy loam	10-25% slopes
WmE	Wedowee sandy loam	15-25% slopes
WsC	White Store sandy loam	6-10% slopes
WsE	White Store sandy loam	10-25% slopes
WvC2	White Store clay loam	2-10 % slopes, eroded
WvE2	White Store clay loam	10-25% slopes, eroded
WwC	White Store-Urban land complex	0-10% slopes
WwE	White Store-Urban land complex	10-25% slopes
WxE	Wilkes sandy loam	10-25% slopes

E. Acceptable Management Measures

Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The State Sedimentation Control Commission recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

1. **Avoid increases in surface runoff volume and velocity by including** measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
2. Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
3. Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities at the point of discharge. These may range from simple rip-rapped sections to complex structures; and
4. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

F. Exceptions

This section shall not apply where it can be demonstrated, to the satisfaction of the Sedimentation and Erosion Control Officer or designee that stormwater discharge velocities will not create an erosion problem in the receiving watercourses.

12.10.6 Borrow and Waste Areas

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the State Department of Environmental and Natural Resources Division of Solid Waste Management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

12.10.7 Access and Haul Roads

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

12.10.8 Operations in Lakes or Natural Watercourses

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

12.10.9 Responsibility for Maintenance

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act), this section, rules or orders adopted or issued pursuant to this section or the Act, or an approved sedimentation and erosion control plan. After site development, the land owner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

12.10.10 Additional Measures

Whenever the Sedimentation and Erosion Control Officer, or designee, determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take the additional protective action directed.

Sec. 12.11 Performance Guarantees

12.11.1 Filing of Performance Guarantees

Performance guarantees, as described below, in an amount determined at the reasonable discretion of the director or designee of the City or County department(s) responsible for supervision and/or acceptance of the constructed infrastructure, shall be required for delays in completion of necessary infrastructure improvements, landscaping, and committed elements. Where the improvements have not been completed before final plat approval or issuance of a Certificate of Compliance for a building within the approved project, the responsible department director(s) or designee(s) shall specify the time period within which such improvements must be completed.

12.11.2 Form and Conditions of Performance Guarantee

Such guarantee may be in the form of a surety bond, letter-of-credit, or some other surety instrument acceptable to the City or County. Such guarantee shall be conditioned upon the performance of all work necessary to complete the specified improvements and the delivery of all necessary encroachment agreements, with said performance and delivery to be done within a stipulated time period. The required amount of the guarantee shall be as determined by the City or County and shall allow for administrative costs, inflation, and other contingencies.

A. Release of Guarantee

All improvements shall be completed according to the City, County, or NCDOT standards and specifications, as applicable, and shall be acceptable for City or State maintenance. No guarantee shall be released until all of the appropriate agencies certify that all of the necessary improvements have been completed as required.

B. Completion

Once the conditions of the guarantee have been completed to the satisfaction of the City or County, the guarantee shall be released.

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Article 13 | Additional Requirements for Subdivisions

Sec. 13.1 Preservation of Significant Features

Subdivision design shall be sensitive to the protection and preservation of existing site features, natural and man-made. To the maximum extent possible, subdivisions shall be designed to preserve structures and sites of historic or cultural significance, small family cemeteries, and to protect habitats of rare or unusual plants or wildlife as documented in the established Durham Inventory, the State Natural Heritage Listing, or the National Register of Historic Places.

Sec. 13.2 Consistency with Public Plans and Policies

Subdivision of land shall be consistent with adopted public plans and policies for the area in which it is located. This includes general policy regarding development objectives for the area as reflected in the Comprehensive Plan, as well as specific policy or plans for public facilities such as streets and thoroughfares, parks and open space, schools, and other similar facilities.

Sec. 13.3 Naming of Subdivisions

The name of a subdivision shall not duplicate nor closely approximate the name of an existing subdivision within the City or County.

Sec. 13.4 Block Standards

- 13.4.1** Blocks shall have sufficient width to provide for two tiers of lots, except where single tier lots are required to separate residential development from arterial traffic, to separate lots from an incompatible use, to accommodate a requirement for single-loaded streets, to allow for unusual topographic conditions or when adjacent to the outer perimeter of the subdivision.
- 13.4.2** Subdivision of property greater than two contiguous acres in size within Design Districts shall meet the following block standards:
- A.** Any two adjacent block sides shall not exceed a total of 800 feet in length;
 - B.** Each block shall be a minimum of one acre and a maximum of 3.5 acres in size, except that a block that is greater than 3.5 acres but less than 5 acres in size shall be allowed if a pedestrian mall under paragraph 6.12.2E.1, Pedestrian Mall Standards, or a publicly accessible alley is provided in lieu of right-of-way to create de facto blocks that meet the size requirements of this section;
 - C.** Any new right-of-way shall continue or connect the existing street grid, unless the resulting block sizes would not meet the standards of this section;
 - D.** New right-of-way shall be a public street unless otherwise allowed by the approving authority;
 - E.** An existing right-of-way shall not be closed without providing an alternate right-of-way that accomplishes the same or similar connectivity.

Sec. 13.5 Lot Standards

13.5.1 Access

- A. Every buildable lot shall abut a public street, a private street, or a driveway allowed for access within a townhouse development or shopping center under paragraph 12.2.2B.2.b above, capable of providing access to a lot.
- B. In the DD District, every buildable lot shall abut a public street or pedestrian mall.

13.5.2 Side Lot Lines

Side lot lines shall intersect rights-of-way between 60 and 90 degrees on a straight street, or from the tangent of a curved street.

13.5.3 Double Frontage

- A. Residential lots that have frontage on two non-intersecting local or collector streets shall be accessed from one street only with treatment such as a berm, walls, or landscaping fronting on the second street to preclude access.
- B. Residential lots adjacent to a major or minor thoroughfare shall have vehicular access from the local street only.
- C. Nonresidential lots with double frontage shall have off-set access points to inhibit cut-through traffic except in the DD District where alternate access points may be allowed as follows:
 - 1. Shall connect at least two public rights-of-way on opposite sides of the block;
 - 2. Shall be a minimum of 16 feet wide; and
 - 3. Shall be clearly visible to pedestrian and vehicular traffic.

13.5.4 Flag Lots

- A. **Dimensions**

The extension, or “pole,” for flag lots shall be a minimum of 20 feet in width.
- B. **Setbacks**

The front setback on any flag lot shall be the equivalent side yard setback established in Sec. 7.1, Housing Types, for the particular housing type proposed for use on the lot.

13.5.5 Existing Structures

The subdivision or resubdivision of a tract or lot shall not be permitted to cause an existing structure proposed for preservation to violate the standards of this Ordinance.

13.5.6 Lot Numbering

All lots shall be numbered consecutively within each block. Lot numbering can be cumulative throughout the subdivision if the numbering continues from block to block in a uniform manner. Any lots being resubdivided shall be consecutively numbered beginning with the last available number in the existing block or subdivision.

Sec. 13.6 Street Connectivity Requirements

An interconnected street system is necessary in order to promote orderly and safe development by ensuring that streets function in an interdependent manner, provide adequate access for emergency and service vehicles, enhance access by ensuring connected transportation routes, provide access for people walking and bicycling, and provide continuous and comprehensible traffic routes.

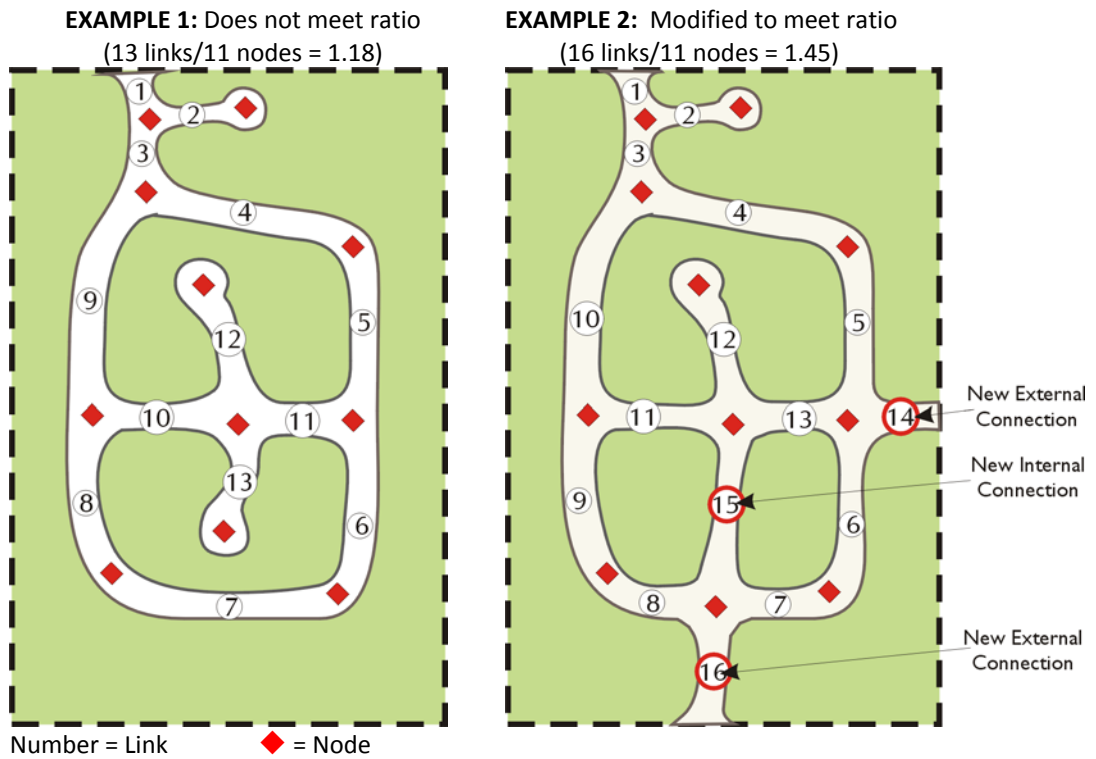
13.6.1 Connectivity Defined

- A.** Except in Design Districts, connectivity shall be defined by the ratio of links to nodes in any subdivision.
 - 1.** The connectivity ratio shall be the number of street links divided by the number of nodes or end links, including cul-de-sac heads.
 - 2.** A link shall be any portion of a street, other than an alley, defined by a node at either end. Stub-outs to adjacent property shall be considered links. For the purpose of determining the number of links in a development, boulevards, median-divided roadways, and divided entrances shall be treated the same as conventional two-way roadways.
 - 3.** A node shall be the terminus of a street or the intersection of two or more streets.
 - a.** Any curve or bend of a street that exceeds 75 degrees shall receive credit as a node. Any curve or bend of a street that does not exceed 75 degrees shall not be considered a node.
 - b.** A divided entrance shall only count once.
- B. Connectivity in Design Districts**

Connectivity shall be defined as the continuation of the traditional grid pattern established by the existing road network and creation of new blocks according to paragraph 13.4.2, Block Standards.

13.6.2 Required Ratio

- A. Street Network**
 - 1.** The street network for any subdivision with internal roads or access to any public road shall achieve a minimum connectivity ratio of 1.40 in all tiers except the Rural and Downtown Tiers, measured within the subdivision.
 - 2.** Within the Rural Tier, the street network for any subdivision with internal roads or access to any public road shall achieve a minimum connectivity ratio of 1.15, measured within the subdivision.
- B.** Street links and nodes along a collector or arterial street providing access to a proposed subdivision shall not be considered in computing the connectivity ratio.
- C.** Stub-outs that cannot be constructed pursuant to paragraph 12.3.1F, Stub Outs, shall be considered as being present as a link at the ratio of one link per side as provided in paragraph 12.3.1F, Stub Outs, for purposes of determining if the required ratio has been met.



Sec. 13.7 On-Site Wastewater Disposal Standards

For any subdivision proposing to use on-site wastewater disposal, the minimum lot size shall be one acre.

Sec. 13.8 Ownership Alternatives

- 13.8.1** Subdivisions shall not receive final plat approval until the applicant furnishes an attorney's certification that proper legal provisions have been made for the following, as applicable:
- A.** Establishment of property owners association;
 - B.** Declaration of covenants and restrictions for common areas;
 - C.** Declaration of unit-ownership development; and
 - D.** Provisions for perpetual ownership and maintenance of commonly-owned streets, utilities, other improvements, and lands.
- 13.8.2** All final plats containing private streets and roads shall contain a note requiring a disclosure statement to be furnished to all subsequent purchasers of property shown on the plat.

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Article 14 | Nonconformities

Sec. 14.1 General

14.1.1 Purpose

Zoning regulations established by the adoption of this Ordinance or amendments to this Ordinance may cause properties and uses which were lawful prior to the adoption of certain regulation to not meet requirements after adoption of the regulations. The purpose of this section is to establish procedures and regulations for the use of those properties or structures which are in conflict with the requirements of this Ordinance. It is not the intent of this section to encourage the continuance of nonconformities that are out of character with the standards of the zoning district. It is the intent of this section, however, to allow certain nonconforming situations to continue as legal exceptions to this Ordinance.

14.1.2 Nonconformities Defined

A nonconformity shall be any use, lot, improvement, or structure that, as a result of amendments to this Ordinance or a preexisting condition, does not meet the current standards of the Ordinance.

A. Nonconforming Use

A nonconforming use shall be any land use or type of residential use that was legally established but has become a prohibited use in the district in which it exists.

B. Nonconforming Lot

A nonconforming lot shall be any legally established parcel that does not conform to the current area or dimensional requirements of the zoning district in which it is located, except that any legally established lot of record not located within a Special Flood Hazard Area that has a minimum width of 35 feet created prior to the effective date of this Ordinance that is located on a street that is accepted and maintained by NCDOT or the City (or such other form of access as is permitted pursuant to paragraph 12.2.2, Other Forms of Access) may be developed with a single family residence subject to Sec. 8.7, Watershed Protection Overlay Standards, and the availability of water and wastewater treatment systems, so long as such use is a permitted use in the district in which the property is located.

C. Nonconforming Improvement or Structure

A nonconforming improvement or structure shall be any legally established improvement, building or structure that fails to meet current Ordinance standards for setback, height, or similar factors.

14.1.3 Continuation of Nonconformities

Legal nonconformities may continue subject to the limitations of this Article. Continuation, reconstruction, alteration, and/or expansion of such nonconformities shall be subject to the provisions of this Article.

14.1.4 Maintenance and Repair

Nothing in this section shall prohibit the ordinary maintenance and repair of a nonconformity, including but not limited to repairs required by the Durham Housing Code, except that nonconforming structures that have suffered repetitive loss due to flooding shall not be permitted to be repaired. Maintenance and repair shall be subject to issuance of building permits, as is required by the Building Code.

14.1.5 Completion of Buildings and Improvements

A. Nonconformities Resulting from Adoption of this Ordinance.

Completion of buildings that become nonconforming as a result of passage of this Ordinance shall be allowed if an application for a building permit sufficient to allow approval was submitted prior to passage of this Ordinance, and if the building is subsequently completed in accordance with an approved building permit within 2 years of initial issuance of the permit. In addition, completion of buildings for which building permits were not applied for may be allowed under the Transitional provisions of this Ordinance. Completion of improvements other than buildings that become nonconforming as a result of passage of this Ordinance shall be governed by the Transitional provisions of this Ordinance.

B. Subsequent Nonconformities.

Completion of buildings that are created by amendments to this Ordinance shall be allowed if a building permit was issued prior to the amendment, if the permit remains continuously valid, and if the building is completed within 2 years of initial issuance of the permit. Completion of buildings or improvements for which permits were not issued, but that are subject to site plans or preliminary plats that were approved prior to the Ordinance amendment shall be governed by the provisions regarding continuous validity of site plans and preliminary plats found elsewhere in this Ordinance.

Sec. 14.2 Nonconforming Uses

A nonconforming use may be continued (though for some uses the period of time within which the use may be continued may be limited). If a nonconforming use or activity is governed elsewhere in this Ordinance, such as in Sec. 5.3, Limited Use Standards, the stricter of those provisions or the provisions below shall apply where there is a conflict in provisions. Otherwise, all applicable restrictions shall apply. The provisions below shall not be interpreted to change any amortization period or buffering requirement applicable elsewhere in this Ordinance to specifically identified nonconforming uses.

14.2.1 Limitations on Nonconforming Uses

Except as specified in paragraph 14.2.2, Changes to Nonconforming Uses (City Only), nonconforming uses shall be subject to the following restrictions, in addition to restrictions that may be imposed by other provisions of this ordinance or by conditions within a special use permit or other approved plan or permit:

- A. Floor area shall not be enlarged, except for improvements that allow existing buildings to meet local health, sanitary, or safety code requirements or that are necessary to ensure safe living or occupancy conditions;
- B. Residential density shall not be increased;
- C. Lot coverage shall not be increased;
- D. The nonconforming use shall not expand in degree, frequency, intensity, or impact of the activity;
- E. The nonconforming use shall not be relocated to another portion of a lot, except as allowed in the City pursuant to provisions authorizing the issuance of special use permits for certain nonconforming uses, described below; and,
- F. The nonconforming use shall not be changed to a different nonconforming use, except as allowed in the City pursuant to provisions authorizing the issuance of special use permits for certain nonconforming uses, described below.

14.2.2 Changes to Nonconforming Uses (City Only)

- A. A single-family residential nonconforming use can be expanded one time during its existence through enlargement of the floor area of the building associated with the nonconforming use by a maximum of 10% or 500 square feet, whichever is greater, and an associated increase in lot coverage, provided that such expansion complies with all development standards of the established zoning district in which the nonconforming use is located at the time of expansion.
- B. Nonconforming uses located on a major or minor thoroughfare may be changed to a different nonconforming use, or range of uses, or relocated on the same site, upon issuance of a minor special use permit pursuant to Sec. 3.9, Special Use Permit. The Board of Adjustment may limit the time period for which such a use permit is valid, if it determines such limitation is necessary or in the public interest. In order to issue such a permit, in addition to consideration of all criteria generally applicable to special uses, the Board of Adjustment shall find that:

1. The proposed new nonconforming use, if a new nonconforming use is proposed, is more compatible with the development pattern of the surrounding area than the previous nonconforming use; and
2. Mitigation measures included as specific conditions in the permit, if necessary, are adequate to provide protection for nearby properties; and,
3. The proposed use, range of uses, or relocation of uses reduces the impacts on the surrounding area in comparison with the established nonconformity. In making this determination, the Board of Adjustment may consider factors such as:
 - a. Whether the proposed new nonconforming use is considered less intense than the previous nonconforming use considering the uses permitted in each zoning district and the hierarchy of zoning districts established in paragraph 4.1.1, Establishment of Districts, with the districts listed in order from least intense to most intense;
 - b. Whether the proposed new nonconforming use can be expected to generate less traffic, particularly peak hour traffic, than the previous nonconforming use; and,
 - c. Whether the proposed new use can be expected to result in a decrease in parking demand from the previous nonconforming use.

14.2.3 Abandonment

A nonconforming use can be changed at any time to a use that conforms to a use allowed by the zoning district. A nonconforming use shall not be re-established if it is:

- A. Converted to a conforming use;
- B. A use that utilizes a structure and is abandoned for a period of at least six consecutive months, as evidenced by termination of utilities, declaration of inhabitability, or other action that the Planning Director or designee deems an indication of abandonment;
- C. A use that is conducted outside of a structure and is abandoned for a period of at least 30 days as evidenced by removal of equipment or other action that the Planning Director or designee deems an indication of abandonment; or,
- D. In the City, changed to a different non-conforming use through the issuance of a minor special use permit.

14.2.4 Damage/Destruction

A nonconforming use other than a single-family use that is contained in a structure that is damaged or partially destroyed can only be reestablished if the damage is less than 50% of the appraised tax value, a completed building permit is issued within 12 months of damage or partial destruction, and construction is completed within 12 months of issuance of the permit. A single-family nonconforming use can be reestablished in any event. No new structure may be constructed to be used as an accessory structure to a nonconforming use.

14.2.5 Home Occupations

Nonconforming home occupations for which receipt of a home occupation permit prior to adoption of this Ordinance that can be documented can continue only for as long as the holder of the original permit resides on the property and operates the use.

14.2.6 Single-Family Use Exemption

Single-family uses that were conforming uses prior to January 1, 2006, shall be exempt from the limitations of this Section.

Sec. 14.3 Nonconforming Lots

14.3.1 General Standards

- A.** The creation of a lot with a width or area smaller than allowed by existing zoning requirements is prohibited, except by governmental action, such as a road widening or an officially adopted housing program.
- B.** Notwithstanding this prohibition, the creation of a lot that does not meet Ordinance requirements is allowed where such lot is comprised of one or more legal nonconforming lots that are being enlarged to create a lot that more closely meets Ordinance standards, or for the purposes of setting land aside as permanent open space with no development rights, provided that the resulting lots satisfy the dimensional requirements of paragraph 7.2.4, Open Space Calculation, or paragraph 7.2.5, Useable Open Space Design.
- C.** Where governmental action has reduced the size of a lot, construction, reconstruction, and additions to structures on the lot shall be considered under the standards for nonconforming lots set forth in this subsection.

14.3.2 Single-Family Residential Lots

- A.** Lots that do not meet the requirements of paragraph 14.1.2B, Nonconforming Lot, may be developed following approval by the Board of Adjustment as a minor special use in accordance with Sec. 3.9, Special Use Permit, and the Board of Adjustment's making one of the additional following findings:
 - 1.** The general area around the subject lot is developed and the size of the lot to be developed is reasonably consistent with the general pattern of surrounding development; or
 - 2.** The general area around the subject lot is developed and the building to be constructed will not substantially impact surrounding development in a negative manner; or
 - 3.** It would be unreasonable or cause undue economic hardship to not allow development of the subject lot. Factors to be considered include, but are not limited to:
 - a.** Ownership history;
 - b.** Prior development approvals regarding the subject lot or surrounding lots;
 - c.** Economic investments; and
 - d.** The purposes to be served by requiring compliance with lot size requirements.
- B.** Side yard requirements for single-family residential development on nonconforming lots that do not meet lot width requirements shall be reduced as follows:
 - 1.** In the Suburban, Urban, Compact and Downtown Tiers, each side yard shall be at least 80% of the required side yard for the district in which the lot is located.
 - 2.** In the Rural Tier, the sum of the width of the two side yards of a nonconforming lot of record shall be at least 25% of the lot width. The minimum single side yard of a nonconforming lot of record shall be 12% of the lot width. In addition to these requirements, the following minimums apply: if the nonconforming lot of record exceeds

a width of 55 feet, then each side yard shall be a minimum of 8 feet wide. If the nonconforming lot of record is 55 feet wide or less, each side yard shall be a minimum of 6 feet wide.

14.3.3 Lots Other Than Single-Family Lots

Where otherwise allowed by this Ordinance, a structure other than a single-family structure may be constructed on a legal nonconforming lot only upon the issuance of a minor special use permit by the Board of Adjustment in accordance with Sec. 3.9, Special Use Permit.

14.3.4 Lots within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas

Nonconforming lots within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas shall only be developed pursuant to paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas, in addition to the requirements of this section.

Sec. 14.4 Nonconforming Improvements and Structures

This section shall govern expansion and improvements to nonconforming buildings; expansion and improvements to improvements that are not buildings; and building, improvements, and reconstruction on development projects governed by site plans or plats that are completed but which do not meet the requirements of this Ordinance.

14.4.1 Nonconforming Buildings or Structures

- A. Reconstruction of buildings, including single family homes, that are located in Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, shall not be permitted if the structure has experienced substantial damage or repetitive loss. Any construction or development in such areas shall be subject to paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas, in addition to the requirements of this section.
- B. Additions to, or reconstruction of, nonconforming buildings and structures not located within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas shall require approval of a minor special use permit pursuant to Sec. 3.9, Special Use Permit, unless exempted pursuant to paragraph 3, below.
 - 1. No enlargement or reconstruction shall have the effect of increasing the degree or extent of a nonconforming feature.
 - a. Additions that are proposed between the minimum yard requirement and the existing building line, or are consistent with the existing height, shall not be considered to increase the degree or extent of the nonconformity.
 - b. An addition shall be considered to increase the nonconformity if it extends further into required yards than the existing encroachment.
 - 2. No enlargement or reconstruction shall create new nonconformities or encroachments, unless a variance is approved pursuant to Sec. 3.14, Variance.
 - 3. The following additions and reconstruction, not located within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, are exempt from a minor special use permit requirement:
 - a. Improvements that allow existing buildings to meet local health, sanitary, or safety code requirements or that are necessary to ensure safe living or occupancy conditions;
 - b. Improvements that require a certificate of appropriateness pursuant to Sec. 3.17, Certificate of Appropriateness;
 - c. Additions of any size that:
 - (1) Comply with all current ordinance requirements, and proposed height is consistent with or less than the existing height of the structure; or
 - (2) Brings the entire structure into closer conformance with current ordinance requirements.

- d. Additions, with a maximum increase in square footage of 10%, that are proposed between the minimum yard requirement and the existing building encroachment line;
- e. Reconstruction of the nonconforming structure that is within the original building footprint and is consistent with the height of the original structure. Proposed additional square footage shall meet the parameters of paragraphs c or d above, as applicable, to be exempt from the requirement of a minor special use permit.
- f. Reconstruction, enlargement of, or improvements to a nonconforming structure that is part of a housing program initiated by or supervised by the City, County, or an entity created by the City, County, or State of North Carolina, as long as the degree or extent of the nonconforming feature is not increased.

C. Time-Period Limitations for Reconstruction of Nonconforming Structures

- 1. Single-family or duplex structures, and associated accessory structures, can be re-built within the original building footprints as long as a certificate of compliance for the new structure is issued within 36 months of the date of demolition or destruction of the original structure. Otherwise, current ordinance requirements shall be met. The Planning Director can issue an extension for up to 12 months, as long as documentation is provided that demonstrates due diligence has been made to re-build the structure.
- 2. Multifamily and non-residential structures can be re-built within the original footprints as long as a certificate of compliance for the new building is issued within 36 months of the date of destruction or demolition. Otherwise, current ordinance requirements shall be met.

14.4.2 Improvements to Nonconforming Land Improvements that are not Structures

Additions or changes to nonconforming land improvements such as parking lots, ponds, or other constructed features on land shall not be made unless the addition or improvement brings the land improvement or the development of which it is a part into greater conformity with this Ordinance. Where an improvement of this type is being made in association with enlargement of a nonconforming building, the application shall be considered under paragraph 14.4.1, Nonconforming Buildings or Structures, above.

14.4.3 Construction on, Redevelopment of, and other Improvements to Nonconforming Development Projects

Development projects, such as those approved in accordance with a site plan or preliminary plat, may no longer conform to Ordinance requirements in all areas, such as impervious area, stormwater improvements, flood elevations, location of constructed areas, vegetated areas, or buffers. Such projects shall be considered nonconforming projects. Additions to, enlargement of, redevelopment of, or other construction on such projects shall be subject to the following provisions:

- A. If the construction affects discrete portions of the development project those portions can be considered without regard to compliance of the entire project with the Ordinance. In such case, current Ordinance requirements shall be applied to the improvements for which approval is requested to the maximum degree reasonable in light of the fact that the development project as a whole does not comply with current requirements; and

Sec. 14.4 Nonconforming Improvements and Structures

- B. Redevelopment of a development project, defined as construction that exceeds 50% of the appraised tax value of the project, shall be subject to all current Ordinance requirements.

14.4.4 Variance

Enlargement, reconstruction, or improvements to nonconformities that do not meet the provisions listed above may seek a variance from current Ordinance requirements under the Variance provisions of this Ordinance.

Article 15 | Enforcement

Sec. 15.1 Violations; Violators

15.1.1 Applicability

Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, shall apply to enforcement provisions of this Ordinance and state statute or regulation governing sedimentation and erosion control. Sec. 15.6, Floodplain and Flood Damage Protection Enforcements and Penalties, shall apply to enforcement of provisions of this Ordinance and state statute or regulation governing floodplain and flood damage protection. Sec. 15.8, Riparian Buffer Protection Enforcement, shall apply to enforcement of provisions of this Ordinance and state statute or regulation governing riparian buffers, including reservoir and wetland buffers. The provisions of those sections, where applicable, shall supersede conflicting provisions of this Article.

15.1.2 Violation

- A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.
- B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.
- C. Each day of a violation may be considered a separate and distinct violation.

15.1.3 Violator

A. General

Violators may include any person who owns, leases, occupies, manages, or builds any structure or engages in any land development activity in violation of this Ordinance and any person who owns, leases, or occupies a use in violation of this Ordinance. A violation may be charged against more than one violator.

Commentary: The definition of violator and the ability to charge more than one violator means that both tenant and landlord, where applicable, may be in violation and subject to penalties.

B. Sedimentation and Erosion Control (Sec. 3.8, Sec. 12.10, Sec. 15.5)

The person responsible for violations of Sec. 3.8, Sedimentation and Erosion Control or Sec. 12.10, Sedimentation and Erosion Control, or Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, consistent with the provisions of NCGS § 113A-64 shall mean:

1. The developer or other person who has, or holds himself out as having, financial or operation control over the land-disturbing activity; or

2. The landowner or person in possession or control of the land when he or she has directly or indirectly allowed the land-disturbing activity, has benefited from it, or has failed to comply with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act), Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan.

15.1.4 Responsibility

The Planning and/or Inspections Director, and/or County Engineer, or appropriate designees, shall enforce this Ordinance and the remedies authorized under this section. The responsible individual shall have the authority to settle any violations that involve the payment of money to the governing entity in exchange for a written release from actual or potential claims.

Sec. 15.2 Determination of Violation

15.2.1 Notice of Violation

- A.** When a violation is discovered, and is not remedied through informal means, written notice of the violation shall be given. This notice shall be delivered by:
 - 1.** Hand delivery or certified mail to the violator's last known address; or
 - 2.** Certified mail or hand delivery to the property in violation; or
 - 3.** Posting the notice at the property in violation.
- B.** When service is made by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after mailing.
- C.** The notice shall include a description of the violation and its location, the measures necessary to correct it, the possibility of civil penalties and judicial enforcement action, and notice of the right to appeal. The notice shall also state the time period allowed, if any, to correct the violation, which time period may vary depending on the nature of the violation and knowledge of the violator.
- D.** This notice shall be an administrative determination subject to appeal as provided below.
- E.** A notice of violation shall not be required where a notice of the same violation has been issued to the same violator at the same property within the previous two years. In such cases, the violator may be charged with a continuing violation without further notice. A notice shall also not be required where action is taken under paragraph 15.3.5, Judicial Action to Collect Civil Penalty, or paragraph 15.3.6, Permit Denial or Conditions.

15.2.2 Appeal to Board of Adjustment

- A.** A violator who has received a notice of violation may appeal the Director's determination that a violation has occurred to the Board of Adjustment by making a written request and paying the appropriate fee within 30 days of receipt of the notice of violation.
- B.** Citations that follow the original notice of violation may not be appealed to the Board.
- C.** The Board shall hear the appeal and may affirm, modify, or revoke the determination of a violation. If there is no appeal, the Director's determination of the nature and degree of violation are final.

15.2.3 Failure to Comply with Notice or Board of Adjustment Decision

If the violator does not comply with a notice of violation which has not been appealed, or with a final decision of the Board of Adjustment, the violator shall be subject to enforcement action as prescribed in State law or by this Ordinance.

Sec. 15.3 Remedies; Enforcement Action

15.3.1 General

Enforcement may be by any one, all, or a combination of the remedies described below or in other sections of this Ordinance or otherwise authorized by common law or statute. Such statutes include but are not limited to NCGS § 153A, Sections 123, 324, 334, and 361 et. seq. and § 160A Sections 175, 365, 375, 389, and 421 et. seq.

15.3.2 Options for Remedying a Violation

A violator shall have several options available to come into compliance with this Ordinance, as listed below. During the efforts to correct the violation, enforcement actions may be stayed.

- A.** Meet the Ordinance requirements cited in the Notice of Violation or citation.
- B.** Where appropriate, obtain a zoning map change for the property to a district in which the activity would be permitted, in accordance with Sec. 3.5, Zoning Map Change. Failure to obtain the zoning map change shall mean that the violation has not been corrected.
- C.** Where appropriate, request a variance to the provisions of this Ordinance, in accordance with Sec. 3.14, Variance. Failure to obtain the variance shall mean that the violation has not been corrected.
- D.** Amend the text of this Ordinance to eliminate the violation, in accordance with Sec. 3.19, Text Amendment. Failure to obtain the approval of the text change shall mean that the violation has not been corrected.

15.3.3 Injunctive Relief in Superior Court

A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by NCGS § 160A-175 and NCGS § 153A-123. The governing entity shall have the authority to execute an order of abatement if the violator does not comply with such order, and the costs of execution shall be a lien on the property in the nature of a mechanic's or materialman's lien.

15.3.4 Criminal Penalties

A violation shall constitute a misdemeanor or infraction, as provided by NCGS § 14-4, subject to a maximum fine of \$500 and imprisonment of up to 30 days for each violation.

15.3.5 Judicial Action to Collect Civil Penalty

A civil action in the nature of debt may be filed in any court of competent jurisdiction to collect an unpaid civil penalty imposed under Sec. 15.4, Penalties Other than Sedimentation and Erosion Control Penalties.

15.3.6 Permit Denial or Conditions

Any permit, certificate, or other authorization that has been issued for property on which there is an uncorrected violation may be withheld, or may be conditioned on the correction of the violation and/or payment of a civil penalty, and/or posting of a compliance security.

15.3.7 Permit Revocation or Voiding

- A. Any permit, certificate or other authorization may be revoked or voided upon a written determination by the Planning Director, the Inspections Director, or the County Engineer, or designees, that the violation is substantial. The determination of such substantial violation shall be subject to appeal as provided in paragraph 15.2.2, Appeal to Board of Adjustment.
- B. Any permit or certificate mistakenly issued in violation of State law or local ordinance, or issued on the basis of misrepresentations by the applicant, owner, or owner's agent may be revoked or voided without such written determination as required above.

15.3.8 Stop Work Order

- A. When the violation pertains to construction or alteration of a structure, a stop work order may be issued in accordance with NCGS § 160A-421 and NCGS § 153A-361 or the NC Building Code. All zoning requirements pertaining to the location and siting of structures are considered local building laws for application of NCGS § 160A-421 and NCGS § 153A-361.
- B. Appeal of an order relating to a local building law shall initially be to the Inspections Director or designee who shall conduct a hearing within 10 working days of the issuance of the order. Further appeal may be made to the Board of Adjustment.

15.3.9 Additional Remedies for Sign Violations

In addition to the other remedies provided in this Section, violations of Article 11, Sign Standards may be remedied through the following:

- A. The Inspections Director, or designee, may revoke the sign permit for a sign or sign structure in violation, including violations of restrictions on sign copy or the content of a sign face, and may require that the sign copy or sign face be removed, or that the structure on which such copy or face appears be removed. Removal of a sign structure shall not be required where the sign structure could legally be constructed in accordance with the provisions of Article 11, Sign Standards, in effect at the time the violation occurs and where the owner or operator of such sign structure can demonstrate to the Inspections Director's, or designee, satisfaction that he or she had no knowledge concerning the requirements of Article 11, Sign Standards.
- B. The Planning Director, or designee, may remove unpermitted signs, faces, and structures that are located in the public right of way, or on utility poles or structures within the public right of way, or signs, faces, and structures for which no owner can be located, or which present a danger to the public health or safety, or signs in violation of this Ordinance.
- C. Any repeated violation of the same provision of Article 11, Sign Standards, by the same individual or corporation at an identical or different location may result in immediate action against the individual or corporation, and may be considered a subsequent violation for the same offense, and each day a separate violation.

Sec. 15.4 Penalties

15.4.1 General

The Planning Director, or designee, may issue one or more citations and impose one or more civil penalties for a violation, as provided below. If the violator does not pay the civil penalty, the governing entity may collect it in court through a civil action in the nature of debt.

15.4.2 Citation

The Planning Director, or designee, may issue a citation and civil penalty for a violation.

15.4.3 Notice

Notice of the citation and civil penalty shall be given in the same manner as provided in paragraph 15.2.1, Notice of Violation, above. The notice shall include a copy of the notice of violation, the amount of the civil penalty, information about where to pay the civil penalty, the deadline for payment (which shall be 15 days from the date of receipt of the notice), and the possibility of civil and/or criminal enforcement.

15.4.4 Amount

The Planning Director, or designee, may impose a civil penalty of \$500 per violation.

15.4.5 Settlement of Penalties

- A. The Planning Director or designee shall be authorized to determine the amount of payment of penalties that shall be accepted in full and final settlement of some or all of the claims the City or County may have in connection with the violation. The Planning Director or designee shall indicate in writing the claims from which the violator is released.
- B. If the violation has not been remedied, payment of penalties shall not release a violator from potential criminal prosecution or a claim for injunctive relief and/or an order of abatement.

15.4.6 Continuing Violations

- A. The Planning Director, or designee, may issue a citation for a violation that continues without being corrected.
- B. The violator in such cases may be assessed a civil penalty for each day of the continuing violation.
- C. An initial citation for a single violation shall be issued before a citation for a continuing violation may be issued. If the violator has failed to pay the civil penalty and correct the violation after the initial citation, the violator shall be subject to a citation for a continuing violation with a daily civil penalty.
- D. An initial citation shall not be required if the Planning Director, or designee, has previously issued a notice of violation to the violator for the same violation within the previous two years, or if the violator has been specifically warned concerning the violation.

Commentary: “Specifically warned concerning the violation” includes any previous violator who has received a notice of violation or citation for the same violation – whether or not at the current location.

- E. The Planning Director, or designee, may give a single citation for a continuing violation. The citation shall contain a copy of the notice of violation and shall state the violation is continuing, that a daily civil penalty of a specified amount is being imposed, and that the penalty shall be cumulative.

15.4.7 Special Penalties for Destruction of Existing Vegetation

A. General

- 1. Any trees preserved on a development tract in order to meet Ordinance requirements or otherwise indicated to be preserved shall meet the standards of paragraph 8.3.2, Protection of Existing Vegetation.
- 2. Damaging or destroying any tree preservation area that is indicated on any site plan, development plan, preliminary plat, or final plat shall constitute a violation of this Ordinance.

- B. Any new trees planted as part of required landscaping under Article 9, Landscaping and Buffering, shall be maintained and, if necessary, replaced with vegetation. Failure to maintain and/or replace said vegetation shall be subject to the provisions of this section.

- C. Damage or destruction of preserved trees by an act of God shall not be subject to the provisions of this section.

D. Applicability and Penalties

- 1. Where any tree with a diameter of eight inches dbh or greater in an area indicated on approved plans to be preserved is damaged, destroyed or removed, such violation shall be penalized as follows:
 - a. A fine in an amount equal to one and one-half times the monetary value of the trees damaged, destroyed or removed. For purposes of such determination the Planning Director, or designee, shall apply the most current standards of the Council of Tree and Landscape Appraisers or a similar method in common use; and
 - b. Trees shall be replaced by new trees of a similar species with at least a two and one-half inch caliper and a cumulative total caliper greater than the original tree.
- 2. Where tree preservation areas are damaged, destroyed or removed and no documentation exists about previous tree cover, such violation shall be penalized as follows:
 - a. A fine of up to \$2.00 per square foot of disturbed area, not to exceed \$40,000 per violation; and
 - b. Replacement vegetation shall be provided in accordance with the buffer landscaping standards of Article 9, Landscaping and Buffering.

E. Certificate of Compliance

Any fine shall be paid and required replacement trees planted before a Certificate of Compliance is issued. Enumeration of these civil penalties shall not be construed to prohibit the use of any other remedy authorized by ordinance or state law.

Sec. 15.5 Sedimentation and Erosion Control Enforcement and Penalties

- 15.5.1** Agents, officials or other qualified persons authorized by the Sedimentation and Erosion Control Officer or designee may periodically inspect land-disturbing activities to ensure compliance with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or (the Act,) or an approved sedimentation and erosion control plan and to determine whether the measures utilized or required in the plan are effective in restraining erosion and retaining sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval of each sedimentation and erosion control plan.
- 15.5.2** No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.
- 15.5.3** If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and inform the person of the actions that need to be taken to comply. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.
- 15.5.4** The Sedimentation and Erosion Control Officer, or designee shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out their duties as prescribed in this section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- 15.5.5** The Sedimentation and Erosion Control Officer, or designee shall also have the power to require written statements, or the filing of reports under oath, with respect to land-disturbing activity.
- 15.5.6 Revocation of Permits**
- A.** The County Engineer shall have the power to revoke land-disturbing permits issued pursuant to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control. When the Sedimentation and Erosion Control Officer or designee proposes to the County Engineer that a land-disturbing permit be revoked, the Officer or designee shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre-termination hearing to be held before the County Engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.

- B. Should the County Engineer determine that the land disturbing permit should be revoked, he/she shall serve the permittee or other responsible person, with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.
- C. The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the Board of Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail, the factual and/or legal basis for the appeal. No grounds other than those so specified may be argued.
- D. No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the Board of Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer or designee has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100% of the current application fee.

15.5.7 Civil Penalties

- A. Any person who violates any of the provisions of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who initiates or continues a land-disturbing activity for which sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be subject to civil penalties. The maximum civil penalty for a violation shall be \$5,000.00, or \$5,000.00 per day for a continuing violation. Civil penalties may be imposed from the date a violation was commenced. Each day of continuing violation shall constitute a separate violation.
- B. The Sedimentation and Erosion Control Officer or designee shall impose the civil penalties authorized by this section. The Sedimentation and Erosion Control Officer or designee shall notify the person upon whom the civil penalties are imposed of the amount and the reason for the penalties. In determining the amount of the penalties the Sedimentation and Erosion Control Officer or designee shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan. The notice of civil penalties shall be served by any means authorized under NCGS § 1A-1, rule 4, and shall direct the violator to either pay or contest the civil penalties, within 30 days after receipt of the notice, by filing a petition for a contested case under NCGS § 150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the

recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS § 150B-36. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § 150B, art. 4.

- C. If payment is not received within 30 days after demand for payment is made the matter will be referred to the County Attorney's Office for initiation of a civil action to recover the amount of the civil penalties. Civil penalties that are not contested are due when the violator is served with a notice of civil penalties. Civil penalties that are contested are due at the conclusion of administrative and judicial review.
- D. The clear proceeds of civil penalties collected pursuant to this section shall be credited to the Durham Public Schools in accordance with the provisions of NCGS § 115C-437.

15.5.8 Criminal Penalties

Any person who knowingly or willfully violates any provision of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who knowingly or willfully initiates or continues a land-disturbing activity for which an approved sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.00, as provided in NCGS § 113A-64.

15.5.9 Enforcement Alternatives

Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under paragraph 3.8.3.

- A. Whenever there is reasonable cause to believe that any person is violating or threatening to violate the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action as provided in paragraph 15.3.3, Injunctive Relief in Superior Court, for injunctive relief to restrain the violation or threatened violation in superior court.
- B. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalties assessed under this section.
- C. Land-disturbing activities undertaken without first obtaining a land-disturbing permit, but which are required by Sec. 3.8, Sedimentation and Erosion Control, to obtain a land-disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalties assigned per paragraph 15.5.7, Civil Penalties.

- D. Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder's obligations under the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer or designee.

15.5.10 Restoration of Areas Affected by Failure to Comply

The Sedimentation and Erosion Control Officer or designee may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS § 113A-57(3) and Sec. 12.10, Sedimentation and Erosion Control, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section or the Act.

Sec. 15.6 Floodplain and Flood Damage Protection Enforcements and Penalties

15.6.1 Corrective Procedure

A. Violations to be Corrected

When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.

B. Actions in Event of Failure to Take Corrective Action

If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

1. that the building or property is in violation of the requirements of Sec. 8.4, Floodplain and Flood Damage Protection Standards;
2. that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
3. that following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

C. Order to Take Corrective Action

If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of Sec. 8.4, Floodplain and Flood Damage Protection Standards, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

D. Appeal

Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

E. Failure to Comply with Order

If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

15.6.2 Penalties for Violations

In addition to the penalties specified on paragraph 15.3.4, Criminal Penalties, the following penalties may also be imposed:

A. Stop Work Order

The Inspections Director, or designee, (acting as the Floodplain Administrator) may order work on any site within a Special Flood Hazard Area to be immediately stopped whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance. The stop work order shall be in writing and directed to the person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop work order shall constitute a misdemeanor.

B. Revocation of Permits

The Inspections Director, or designee (acting as the Floodplain Administrator), may revoke and require the return of a permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked.

C. Correction of Violations

The owner or occupant of any building or property notified of a violation by the Inspections Director, or designee, shall immediately remedy each of the violations.

D. Actions in the Event of Failure to Take Corrective Action

1. If the owner or occupant of any building or property notified of a violation fails to take corrective action, the Inspections Director, or designee, (acting as the Floodplain Administrator) shall provide written notice consistent with the requirements of paragraph 15.2.1, Notice of Violation, that the building or property is in violation of the provisions of Sec. 8.4, Floodplain and Flood Damage Protection Standards.
2. The Inspections Director (acting as the Floodplain Administrator) shall schedule a hearing at a designated place and time, not later than ten days after the date of notice, at which time the owner or occupant of the building or property shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the violation.
3. If, following the hearing, the Inspections Director finds that the building or property is in violation of the provisions of Sec. 8.4, Floodplain and Flood Damage Protection Standards, he/she shall issue an order in writing to the owner or occupant of the building or property to correct the violation by altering, vacating, or demolishing the building or removing any fill, whichever is appropriate, within a period deemed reasonable by the Inspections Director. Such period shall not be less than 60 days unless the Inspections Director finds that the violation results in imminent danger to life or other property, in which case a shorter period to correct the violation may be imposed.

Sec. 15.7 Inspections and Investigations

15.7.1 Authorization of Inspection Program

A program of inspection and investigations to determine compliance with this Ordinance and orders, plans, permits, and authorizations issued under this Ordinance is hereby authorized. This program shall be conducted under the general authority of the Planning Director, or designee, and shall be carried out by zoning enforcement officers designated by the Planning Director, or designee.

15.7.2 Inspections of Private Property

- A.** Inspections on private property to determine compliance may be made at any reasonable time with the consent of the occupant of the property, except that, on projects being developed within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, the Inspections Director, or designee (acting as the Floodplain Administrator) shall have authority to make as many inspections of the work as may be necessary to ensure that it is being done according to the requirements of this ordinance and the terms of the permit. In exercising this authority within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, the Inspections Director, or designee, shall have a right, upon presentation of credentials, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspection and/or enforcement.
- B.** Inspections may also be made when an administrative search and inspection warrant has been issued pursuant to NCGS § 15-27.2 by a proper judicial official. To obtain a warrant, the enforcement officer shall show through facts supplied in a sworn affidavit that either:
 - 1.** The inspection is being conducted as part of an administrative plan to inspect all properties of a certain type, and the determination of the properties to inspect was made in accordance with neutral criteria; or
 - 2.** That there is probable cause for believing that a violation may exist.

Sec. 15.8 Riparian Buffer Protection Enforcement

15.8.1 Applicability

The City or County as appropriate shall conduct enforcement pursuant to this section, except where enforcement of an ordinance violation is reserved to the State under this Ordinance and/or State law.

15.8.2 Violation

In accordance with paragraph 15.1.2, Violation, a violation under this section occurs where a person fails to comply with any riparian buffer requirement of this Ordinance, which are contained in Sec. 8.5, Riparian Buffer Protection Standards, Sec. 8.6, Water Supply Reservoir Buffer, Sec. 8.7, Watershed Protection Overlay Standards, Sec. 8.9, Wetlands Protection Standards, Sec. 15.8, Riparian Buffer Protection Enforcement, and any rule, authorization, approval, or order adopted or issued pursuant to those sections.

15.8.3 Inspections

- A.** Agents or employees authorized by the City or County as appropriate may inspect riparian buffers, including reservoir and wetland buffers, to ensure compliance with this Ordinance. Such authorized agents or employees shall have the power to conduct such investigations as they may reasonably deem necessary to carry out their duties, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of inspecting any riparian buffer or conducting a related investigation.
- B.** No person shall willfully resist, delay, or obstruct an authorized agent or employee while that person is lawfully inspecting or attempting to inspect a riparian buffer under this section, nor shall any person interfere with an authorized agent or employee while he or she is in the process of carrying out other official duties.
- C.** Notice of the right to inspect shall be included in any riparian buffer approval.

15.8.4 Power to Require Statements

The City or County as appropriate shall have the power to require written statements, or the filing of reports under oath, with respect to riparian buffers.

15.8.5 Notice of Violation

If it is determined that a person has violated any riparian buffer requirement of this Ordinance, a notice of violation shall be issued and served upon that person pursuant to paragraph 15.2.1, Notice of Violation. As stated therein, the notice shall include remedial measures, which may include revegetation, to be performed, and a deadline for compliance if immediate compliance is not required. The notice shall be an administrative determination subject to appeal under paragraph 15.8.7, Appeal.

15.8.6 Civil Penalties

A. Penalties

Any person who violates any riparian buffer requirement of this Ordinance shall be subject to a civil penalty. The civil penalty for a violation may be a maximum of ten thousand dollars (\$10,000) per day. For a continuing violation, the civil penalty may be a maximum of twenty-

five thousand dollars (\$25,000) per day. Each day of a continuing violation shall constitute a separate violation.

B. Notice

The City or County as appropriate shall issue and serve notice of the civil penalty pursuant to paragraph 15.4.3, Notice, and shall also provide information on the basis for the penalty. The notice shall be an administrative determination subject to appeal under paragraph 15.8.7, Appeal.

C. Payment

A civil penalty is due when the violator is served with notice of the civil penalty. If the penalty is not paid within 30 days of service, or, if appealed, within 30 days of the conclusion of any appeals, the City or County as appropriate may institute a civil action to recover the penalty amount.

D. Use

Civil penalties collected pursuant to this section and used to defray the cost of enforcement or conduct any remediation related to the violation(s) shall be credited to the general fund of the City or County as appropriate as nontax revenue.

15.8.7 Appeal

Appeal from a notice of violation issued under paragraph 15.8.5, Notice of Violation, or a notice of civil penalty issued under paragraph 15.8.6, Civil Penalties, shall be to the Durham Board of Adjustment, which shall conduct a hearing and affirm, modify, or revoke the administrative determination. Notice of appeal must be submitted, and the appropriate fee paid, within 30 days of receipt of the notice of violation or notice of civil penalty as appropriate. If notice of appeal is not submitted in a timely manner, the administrative determination shall be final. Appeal from the Board of Adjustment decision shall be to Superior Court.

15.8.8 Injunctive Relief

Whenever there is reasonable cause to believe that any person is violating or may violate the riparian buffer requirements of this Ordinance, the City or County as appropriate may, either before or after the institution of any other action or proceeding authorized by this section, institute an action for injunctive relief pursuant to paragraph 15.3.3, Injunctive Relief in Superior Court. The institution of such action shall not relieve any party to such proceedings from any penalties assessed or obligations otherwise imposed under this section.

15.8.9 Criminal Penalties

Pursuant to NCGS 143-215.6B, any person who violates any riparian buffer requirement of this Ordinance shall be guilty of a crime as follows:

- A.** Negligent violation: Class 2 misdemeanor with a maximum fine of fifteen thousand dollars (\$15,000) per day of violation, and a maximum cumulative total of two hundred thousand dollars (\$200,000) for each 30-day period of a continuing violation;
- B.** Knowing or willful violation: Class I felony with a maximum fine of one hundred thousand dollars (\$100,000) per day of violation, and a maximum cumulative total of five hundred thousand dollars (\$500,000) for each 30-day period of a continuing violation; or

- C. Knowing violation: Class C felony with a maximum fine of two hundred fifty thousand dollars (\$250,000) per day of violation, and a maximum cumulative total of one million dollars (\$1,000,000) for each 30-day period of a continuing violation.

Commentary: The terms “knowing or willful” as in paragraph B and “knowing” as in paragraph C are explained in NCGS 143-215.6B.

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Article 16 | Definitions

Sec. 16.1 Word Usage

For the purpose of this Ordinance, certain terms are defined as indicated in this section. These definitions and all other provisions of this Ordinance are subject to the following rules of interpretation:

- A. The present tense includes the past and future tenses and the future tense includes the present, unless stated otherwise.
- B. The singular number includes the plural number and vice-versa.
- C. The word "shall" is mandatory.
- D. The word "building" includes the word "structure."
- E. Any term not herein defined shall be as defined elsewhere in the County or City Code or, if not defined elsewhere in the County or City Code, as defined in Webster's New International Dictionary, most recent edition, unless the result does not effectuate the intent of the governing bodies, leads to absurd or illogical results, or is inconsistent with the surrounding textual context.
- F. The time within which any act required by this Ordinance is to be performed shall be computed by excluding the first day and including the last day, unless the last day is a Saturday or Sunday or a holiday declared by the United States Congress or the State of North Carolina, in which event it shall also be excluded.
- G. The word "person" or "applicant" includes individuals, firms, partnerships, joint ventures, trusts, trustees, estates, corporations, associations and any other similar entities.
- H. In case of any difference of meaning or implication between the text of this Code and any caption, illustration or table, the text shall control.

Sec. 16.2 Abbreviations

BFE: Base Flood Elevation
BMP: Best Management Practices
BOA: Board of Adjustment
CC: Commercial Center
CD: Compact Design
CD-C: Compact Design - Core
CD-P: Compact Design – Pedestrian Business
CD-S1: Compact Design – Support 1
CD-S2: Compact Design –Support 2
CG: General Commercial
CI: Commercial Infill
CLOMR: Conditional Letter of Map Revision
CN: Neighborhood Commercial
dbh: Diameter at breast height
DD: Downtown Design
DD-C: Downtown Design – Core
DD-S1: Downtown Design – Support 1
DD-S2: Downtown Design – Support 2
DENR: North Carolina Department of Environment and Natural Resources
DEQ: North Carolina Department of Environmental Quality
DOST: Durham Open Space and Trails Commission
DWR or Division: North Carolina Division of Water Resources
FAR: Floor Area Ratio
Fc: Foot-candles
FEMA: Federal Emergency Management Agency
FIRM: Flood Insurance Rate Map
FIS: Flood Insurance Study
GIS: Geographic Information System
(-H): Historic District Overlay
HAG: Highest Adjacent Grade
HPC: Historic Preservation Commission
HQW: High Quality Water
I: Industrial
IL: Light Industrial
IP: Industrial Park
JCCPC: Joint City-County Planning Committee
L: Permitted Subject to Limitations

LAG: Lowest Adjacent Grade
Ldn: Day-night average sound level
LOMR: Letter of Map Revision
m or M: Minor or Major Special Use Permit, respectively
MU: Mixed Use
NCDOT: North Carolina Department of Transportation
NCGS: North Carolina General Statute
NRCS: Natural Resource Conservation Service
NFIP: National Flood Insurance Program
NGVD: National Geodetic Vertical Datum
OI: Office Institutional
P: Permitted Use
PDR: Planned Density Residential
RC: Residential Compact
ROW: Right-of-way
RR: Residential Rural
RS: Residential Suburban
RU: Residential Urban
SARA: Superfund Amendments and Reauthorization Act
SFHA: Special Flood Hazard Area
SRP: Science Research Park
SUP: Special Use Permit
TDM: Transportation Demand Management
TIA: Traffic Impact Analysis
TUA: Transitional Use Areas
UC: University and College
UDO: Unified Development Ordinance
USDA: United States Department of Agriculture
USGS: United States Geologic Survey
WSE: Water Surface Elevation
(-A60, -A65): Airport Overlay
(-MTC): Major Transportation Corridor Overlay
(-P): Neighborhood Protection Overlay
(-TO): Transitional Office Overlay

Sec. 16.3 Defined Terms

Accelerated Erosion: Any increase over the rate of natural erosion as a result of land-disturbing activity.

Accessory Dwelling Unit: A dwelling that exists as part of a principal dwelling or on the same lot as the principal dwelling and is subordinate in size to the principal dwelling.

Accessory Use or Structure: A use or structure that exists on the same lot with the principal use or structure and is subordinate in size and purpose to the principal use.

Act of God: An event, such as an earthquake or hurricane, that is caused by natural forces and cannot be prevented or foreseen.

Active Recreation: Leisure activities usually of an organized nature, often performed with others and often requiring equipment, taking place at prescribed places, sites, or fields.

Addition (to an existing building): An extension or increase in the floor area or height of a building or structure

Adequate Erosion Control Measure, Structure or Device: means one which controls the soil material within the land area under responsible control of the person conducting the land disturbing activity.

Adjacent: Property abutting directly on the boundary of, touching, or sharing a common point.

Adopted Land Use Plans: Any land use plan adopted by a governing body including, specifically, the *Comprehensive Plan*.

Adult Establishment: A business as defined in North Carolina General Statute (NCGS) §14-202.10(2). This definition includes adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult live entertainment businesses or massage businesses. These uses are further defined in NCGS §14-202.10 and the definitions are adopted by reference; however, those massage businesses where all employees associated with massage meet the ethical and educational requirements specified by the American Massage Therapy Association, or equivalent national or state standards, are exempt from this definition.

Interpretation: Massage businesses meeting these educational and ethical standards may be classified as "Offices" in the Permitted Use chart.

Affiliate: A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

Affordable Housing Dwelling Unit: A dwelling unit committed for a minimum 15-year term as affordable, through covenants or restrictions, to households with incomes at 60% or less of the area median income for a family, as defined by the United States Department of Housing and Urban Development, for the jurisdiction; and where housing costs (rent or mortgage) do not exceed 30% of a family's income.

Afforestation: The act of establishing forest cover.

Agency: A sales or service establishment dealing in services or intangible commodities, or commodities not on site, such as a broker's office, travel agency, temporary employee agency, etc.

Agricultural Uses: Land used as pasture or in the commercial production of crops, forestry, horticultural products, fish hatcheries or aquaculture, and the keeping of livestock for commercial or noncommercial purposes. Also included in this definition of agricultural uses are agricultural

accessory buildings and sales of farm products grown or produced on the premises. This definition does not include any use conducted pursuant to a valid permit issued under Sec. 3.23, Limited Agriculture Permit, the commercial slaughtering of animals for marketing, and farm tenant dwellings.

Airport: A place where aircraft can takeoff and land, be repaired, take on or discharge passengers or cargo, be stored or refueled.

Alley: A strip of land, typically no more than 20 feet in width, either publicly or privately owned, that is set aside primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

Alternative Form of Compliance: A form of compliance that equals or exceeds an applicable standard and is subject to approval as defined in the Unified Development Ordinance.

Antenna: Any apparatus designed for the transmitting and/or receiving of electromagnetic waves to include but is not limited to telephonic, radio or television communications. Types of elements include, but are not limited to: omni-directional (whip) antennas, sectorized (panel) antennas, multi or single bay (FM & TV), yagi, or parabolic (dish) antennas.

Antenna Array: A single or group of antenna(s) and their associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

Antenna, Combined: An antenna or an array of antennas designed and utilized to provide services for more than one wireless provider for the same or similar type of services.

Antenna-Supporting Structure: A vertical projection composed of metal or other substance with or without a foundation that is for the express purpose of accommodating antennas at a desired height above grade. Antenna-supporting structures do not include any device used to attach antennas to an existing building, unless the device extends above the highest point of the building by more than 20 feet. A wireless support structure is defined separately within this section.

Anti-Climbing Device: A piece or pieces of equipment which are either attached to antenna supporting structure, or which are free-standing and are designed to prevent people from climbing the structure. These devices can include but are not limited to fine mesh wrap around structure legs, "squirrel-cones," the removal of climbing pegs on monopole structures, or other approved devices, but excluding the use of barbed or razor wire.

Appeal: Request for review of a final order, interpretation or decision by any administrative official authorized to make such decision.

Apiculture: The maintenance of honey bee colonies.

Area of Shallow Flooding: A designated AO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet, where a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may be evident.

Articulation: An emphasis given to architectural elements (including windows, balconies, porches, entries, etc.) to create a complementary rhythm or pattern; modulation of building facades, massing and detail to create variety.

Bar: See "Nightclub"

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year based on current conditions hydrology.

Base Flood Elevation (BFE): The water surface elevations for the Base Flood as published in the Flood Insurance Study. When the BFE has not been provided in a Special Flood Hazard Area, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA-approved engineering methodologies. This elevation, when combined with the Freeboard, establishes the Regulatory Flood Protection Elevation in Special Flood Hazard Areas.

Base Station: A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communication network. The term does not encompass a wireless support structure as defined in this section or any equipment associated with a tower.

Basement: The lowest level or story which has its floor sub-grade on at least three sides.

Bed and Breakfast Inn: A building or group of buildings containing one or more guest rooms for an overnight stay which are rented at a daily rate and where breakfast is the only meal served to guests.

Being Conducted: A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

Best Management Practice or BMP: Stormwater and runoff pollution control practices designed to reduce the amount of flow or pollutants contained in discharges to the stormwater conveyance system and receiving waters.

Block: A usually rectangular space enclosed by streets and occupied by or intended for buildings.

Block Face: One side of a street between two consecutive intersecting streets.

Boarding House: A building, other than a hotel, rooming house, or bed and breakfast inn, containing at least four, but not more than nine guest rooms. At least one meal is provided to guests. Individual guest rooms shall not contain kitchens.

Borrow: Fill material which is required for on-site construction and is obtained from other locations.

Brewery: A brewery that produces 15,000 or more US beer barrels (460,000 US gallons) per year.

Broadcast Antennae, TV/HDTV/AM/FM Broadcast Facility: Broadcast antenna-supporting structures and/or towers, including replacements, which contain antennae/towers that transmit signals for television and radio communications.

Buffer: A portion of property designated to mitigate impacts between land uses or transportation routes, or to protect water features from pollutants.

Buffer Zone: The strip of land adjacent to a lake or natural watercourse.

Build-To Line: The line a set distance from the back of curb establishing the required building location. Build-to lines shall be measured from the predominant curbline (not including bulb outs) or future curbline where no curb currently exists.

Build-To, Percent of Frontage: The percent of the principal structure's frontage that shall be constructed to a fixed line designed to pull structures forward on a lot. The required minimum build-to is set out as a percentage of the frontage.

Building: As defined in the North Carolina Building Code, as amended, or the North Carolina Residential Code for One and Two-Family Dwellings, as amended, as applicable.

Building Articulation: See Articulation.

Building Base: The portion of the building and building facade at the ground level and any exposed foundation wall, including retaining walls, visible at grade.

Building Bay: Vertical divisions of the exterior facade, as marked by architectural features such as: columns, pilasters, groups of windows, or other architectural elements.

Building Coverage: The horizontal area within the outside of the exterior walls of the ground floor of all principal and accessory buildings. Building coverage is set forth as a percentage of the total lot area.

Building Elevation: One of the exterior vertical faces of a building.

Building Envelope: The area between all required setbacks within which a structure can be located.

Building Front: The side of the building closest to and most nearly parallel with the street which provides access to the lot. In the case of a corner lot or through lot, either side abutting a street may be considered to be the front, provided the building is situated so that it meets all front, side and rear yard requirements.

Building Height: The vertical distance from the average of the finished ground level to the finished roof surface of a flat roof, or to the point at the average height of a roof having a pitch, except for a mansard roof, to the highest finished surface. Height for any building with multiple roof levels shall be determined by the highest roof level.

Building Line: The edge of a building closest to the street.

Building, Main: A building which contains the principal use. In a residential district, any dwelling shall be deemed to be a main building on the lot which it is situated.

Building Permit: A permit issued by the Inspections Department in conformance with the State Building Code.

Building Podium: See Podium.

Building Separation: The required separation between any two buildings located on the same lot or parcel of land.

Bulk Storage: Storage material in containers or tanks for sale to retail dealers, distributors, or outlets or for storage prior to disposal.

Caliper: The diameter of plant material, measured at 6 inches above grade for calipers of up to four inches, and 12 inches above grade for larger calipers.

Canopy: A roof-like cover extending over an outdoor area for the purpose of sheltering individuals or equipment from the weather.

Cardinal Direction: One of the four principal compass points: north, south, east, or west.

Cemetery: A place used or to be used and dedicated or designated for interment of human remains or pet animal remains.

Certificate of Compliance: A statement, signed by an administrative officer, setting forth that a building, structure, or use complies with this Ordinance and Building Codes and that the same may be used for the purposes stated on the permit.

Changeable Copy: The characters, letters, or illustrations of a sign that change, either manually or electronically, without altering the sign.

Chemical Storage Facility: means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Chicken: Poultry or fowl of the species *Gallus gallus*/*G. gallus domesticus*. The species includes many different breeds of chicken.

Chicken Coop: A structure for the sheltering of chickens. An existing shed or garage can be used for this purpose under paragraph 5.4.12B, Domestic Chickens, if it meets the standards contained in paragraph 5.4.12B.7, Construction and Design. A chicken coop is an accessory structure under Sec. 5.4, Accessory Uses and Structures.

Chicken Pen: An enclosure that is connected to and/or surrounding a chicken coop for the purpose of allowing chickens to leave the coop while remaining in an enclosed predator-safe environment.

Clear-cut: To remove all trees within a given area.

Clerestory Window: A window set in a roof structure or high in a wall (above eye-level), typically used for daylighting.

Clinic: Establishments where humans receive treatment of illnesses or pregnancy, or examinations by a doctor, dentist, optician, psychologist, or other similar medical professional on an out-patient basis.

Club or Lodge: A building or site used by a non-profit membership organization for recreational or social purposes.

Cluster Development: A residential subdivision that concentrates development on a portion of a site, leaving the remainder in open space. Cluster developments achieve the land use intensity objectives by virtue of limits to overall density rather than minimum lot sizes.

Collector Street: A local street which serves as a connector street between local residential streets, commercial development and the thoroughfare system; such streets typically collect traffic from 250 to 400 dwelling units.

Collocation: The placement or installation of wireless facilities on existing structures including electrical transmission towers, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.

Columbarium: A structure or building substantially exposed above ground intended to be used for the interment of the cremated remains of a deceased person or animal.

Commercial Dormitory: A structure specifically designed for a long term stay by students of a college, university, or non-profit organization for the purpose of providing rooms for sleeping purposes. One common kitchen and some common gathering rooms for social purposes may also be provided.

Commercial Speech: Any expression related solely to the economic interests of the speaker and its audience, or as otherwise defined by a court of competent jurisdiction.

Committed Elements: See Elements, Commitments.

Commitments: Elements submitted as part of a development plan associated with a zoning map change, which are binding and establish the level of development allowed absent further zoning action except as otherwise allowed or required under this Ordinance. Formerly known as "committed elements."

Common Signage Plan: A plan delineating unifying characteristics for signs associated with a development project or complex.

Completion of Construction or Development: No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

Comprehensive Plan: The overall development plan for the community which has been officially adopted to provide long-range development policies including all specified individual elements thereof among which are the plans for land intensities; land subdivision; circulation; and community facilities, utilities and services.

Conditional Letter of Map Revision (CLOMR): A formal review and comment issued by the Federal Emergency Management Agency as to whether a proposed project complies with the minimum NFIP floodplain management criteria, and direction on revisions that will need to be made to the NFIP maps and/or study upon completion of the project.

Condominium: A form of property ownership whereby the owner gains ownership of an interior space within a building. The building structure, the land under the building, and all of the surrounding land is commonly owned by all the inhabitants on a proportional basis.

Congregate Living Facility: A residential use which undertakes, for a period exceeding 24 hours, care, housing, food service and one or more personal services for persons not related to the owner or administrator.

Contractors: Individuals or firms engaged in the construction of buildings, either residences or commercial structures, as well as activities such as paving, highway construction, and utility construction.

Convalescent Center or Nursing House: A facility that provides nursing services and custodial care on a 24 hour basis for three or more unrelated individuals who for reasons of illness, physical infirmity, or advanced age require such services.

Convenience-Oriented Use: An establishment that provides frequently or recurrently needed items for household use.

Convenience Store: A retail store with a floor area of less than 5,000 square feet that sells groceries and may also sell gasoline but not including vehicle service stations (limited or full).

Corner Tower Element: A corner tower element is an accentuated vertical element located on a building corner at a street intersection allowed to be taller than the rest of the building.

Correctional Facilities: Publicly or privately operated facilities housing persons awaiting trial or persons serving a sentence after being found guilty of a criminal offense.

Crop: Cultivated plants or agricultural produce, such as but not limited to grain, vegetables, or fruit.

Cul-de-sac: A short street having only one end open to traffic and the other being permanently terminated with a vehicular turn-around provided.

Current Conditions Hydrology: The flood discharges associated with the land-use conditions existing within the drainage area of a watercourse at the time a flood study of the watercourse was

conducted. Current conditions flood discharges and historical flood study information are published in the Flood Insurance Study.

Date of Approval: The date of approving authority action.

Day Care Facility: A place that provides for the care of children or adults. Those receiving care are not all related to each other by blood or marriage and are not legal wards or foster children of the attendant adults, and for which care a payment, fee, or grant is made. A daycare home, preschools integrated into the curriculum of a public or private school or not regulated by the State as a daycare facility, and retail drop-in/short-term childcare centers shall not be considered daycare facilities.

Day Care Home: A dwelling in which a permanent occupant provides for the care of no more than five preschool children (including the caregiver's children) and/or three school-aged children (not including the caregiver's children) or adults. Those receiving care are not all related to the occupant or to each other by blood or marriage and are not the legal wards or foster children of the attendant adults. Those receiving care and not dependents of the occupant, do not reside on the site. For the purpose of this Ordinance, such activities shall meet all requirements for home occupations.

Day-Night Average Sound Level: The average noise level over a 24-hour period, weighted by 10 dB between the hours of 10 p.m. and 7 a.m.

Day Treatment Facility: A facility licensed through the NC Department of Health and Human Services, Division of Medical Assistance, which provides supplemental therapeutic or clinical services coordinated with academic and/or vocational services for adults, children, or adolescents with mental health or substance abuse treatment needs, and their families. No overnight accommodations are provided.

Dedication: The transfer without payment of ownership or other interest in real property from a private entity to a public agency.

Density: The number of dwelling units per net developable acre, except in the case of conservation subdivisions, where gross area shall be used in accordance with paragraph 6.2.4 Conservation Subdivision.

Dedication: The transfer without payment of ownership or other interest in real property from a private entity to a public agency.

Design District: Any zoning district or overlay district within which architectural design elements are required.

Developer:

- A. The person, firm, corporation or legal entity that has financial or operational control over the land-disturbing activity; or
- B. The person, firm, corporation or legal entity in possession or control of the land when he/she directly or indirectly allowed the land-disturbing activity, has benefited from it, or has failed to comply with any provision of this Ordinance.

Development: Any human caused change to improved or unimproved real estate that requires a permit or approval from any agency of the City or County of Durham, including but not limited to, constructing or changing buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations and storage of equipment or materials.

Development Plan: A type of plan that becomes part of the zoning of a property that establishes the level of development allowed absent further zoning action except as otherwise allowed or required under this Ordinance.

Diameter at Breast Height (dbh): The diameter of a tree measured four and one-half feet above the ground.

Diet House or Diet Facility: A facility housing a dietary treatment program supervised by trained professionals which can also contain temporary living quarters for clients.

Discharge Point: That point at which runoff leaves a tract of land.

Disposal: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, is defined as in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Distance Learning Center: An educational facility where teaching and learning is specifically designed to be carried out remotely, typically by using electronic communication.

Drive-Through Facility: An establishment that dispenses products or services to patrons who remain in vehicles. Fuel sales are not included.

Driveway: A private roadway located on a parcel or lot used for vehicle access.

Drop-In/Short-Term Childcare Centers: Retail businesses that provide care for individuals on an hourly basis, do not offer enrollment, and do not require daycare licensing by the State.

Durham Inventory, Natural Inventory, or Inventory: The Durham County Inventory of Important Natural Areas, Plants and Wildlife, which in the case of a conflict may be superseded or supplemented by more current information from the North Carolina Heritage Program as determined by the Planning Director. The Durham Inventory does not include the Durham Architectural and Historic Inventory; the Durham County Archaeological Inventory; the Durham County Inventory of Cultural and Natural Resources; or the Durham County and Durham ETA Inventories of Historic Sites, which are referenced separately in the Ordinance.

Dwelling Unit: As defined by the most current edition of the *North Carolina State Building Code: Residential Code*.

Easement: A grant by a property owner for use by the public, a corporation or persons of an area of land for specific purposes.

Electronic Gaming Operation: Any for-profit business or enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, including but not limited to sweepstakes, and where cash, merchandise, or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. Such businesses or enterprises have as a part of its operation the running of one or more games or processes with any of the following characteristics: (1) payment, directly or as an intended addition to the purchase of a product, whereby the customer receives one or more electronic sweepstakes tickets, cards, tokens, or similar items entitling or empowering the customer to enter a sweepstakes, and without which item the customer would be unable to enter the sweepstakes; or, (2) payment, directly or as an intended addition to the

purchase of a product, whereby the customer can request a no purchase necessary free entry of one or more sweepstakes tickets or other item entitling the customer to enter a sweepstakes. The term electronic gaming operations includes, but is not limited to, cyber-gambling establishments, internet sweepstakes, video sweepstakes, or cybercafés, which have a finite pool of winners. This does not include any lottery endorsed or permitted by the State of North Carolina.

Elevated Building: A non-basement building: (a) built in a Special Flood Hazard Area to have the top of the elevated floor, above the ground by means of pilings, columns (posts or piers), shear walls parallel to the flow of water or adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood; or (b) elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

Eligible Facility Request: A request for modification of an existing tower or base station that involves collocation of new transmission equipment, removal of transmission equipment, or replacement of transmission equipment but does not include a “substantial change” of the facility pursuant to the qualifications detailed in the *FCC Report and Order FCC14-153*, or as amended; and complies with all applicable building, structural, electrical, and safety codes and with all other laws codifying objective standards reasonably related to health and safety.

Encroachment: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Energy Dissipater: A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Engineered Stormwater Control: A structural BMP used to reduce pollution or peak flow rates to downstream properties and receiving waters in order to achieve water quality or water quantity control.

Erosion: The wearing away of land surface by the action of wind, water, gravity or any combination thereof.

Erosion Control Plan: A plan designed to control both erosion and sedimentation.

Existing Conditions: Conditions that exist at time of plan or plat submittal.

Existing Manufactured Home Park or Manufactured Home Subdivision: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original adoption of flood damage protection ordinances which occurred in the City of Durham on October 18, 1971 and in Durham County on August 21, 1972.

Extended Stay Residence: An establishment containing 10 or more guest rooms that contain kitchen facilities or other home-like amenities not ordinarily provided in hotels or motels, for overnight guests staying five or more consecutive nights, and providing on-site registration and management.

Fall Zone: The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Family: One or more individuals residing in a dwelling unit, living as a single housekeeping unit, and complying with the following rules:

- A. Any number of individuals related by blood, marriage, or adoption may occupy a dwelling unit;
- B. Where some or all of the occupants are unrelated by blood, marriage, or adoption, the total number of occupants that are unrelated, shall not exceed three. In applying this provision, children who are under the age of 23 and who are children of the owner or a person renting an entire dwelling unit from the owner shall be counted as a single occupant. In addition, in all cases, the limitation set out in subsection C. below shall apply.
- C. Where a reasonable accommodation has been approved.
- D. The presence of household employees or children in foster care shall not disqualify any premises otherwise satisfying the above rules.

Family Care Home: A residential facility as defined in NCGS § 168-21.

Farm: See: "Agricultural Uses"

Farm Products: Includes, but is not limited to, fruits, vegetables, mushrooms, herbs, grains, legumes, nuts, shell eggs, honey or other bee products, flowers, nursery stock, livestock food products (including meat and milk), and seafood.

Farmers' Market: A market open to the public where all products sold are farm products, value-added farm products, or a food or beverage product, and where the booths are operated by producers.

Feed Lines: Cables used as the interconnecting media between a transmission/receiving base station and an antenna.

Fenestration: The design and arrangement of windows and other exterior glazed openings of a building.

Final Plat: The final map of all or a portion of a subdivision which is presented for final approval.

Firing Range: A property prepared, equipped and delineated for the purpose of shooting at targets by rifles [*excluding air rifles*], pistols, shot guns or archery. Excluded from this definition are residential sites and properties with hunting leases.

Flex Space: Buildings designed and marketed as multipurpose facilities with at least 10,000 square feet of leasable space providing opportunities for a mix of office, showroom, distribution, and/or laboratory space. Facilities tend to be single-story.

Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:

- 1. The overflow of inland waters; and/or,
- 2. The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance: The insurance coverage provided under the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM): An official map on which the Federal Emergency Management Agency has delineated the areas of special flood hazard, the Future Conditions Flood Hazard Areas and the risk premium zones.

Flood Insurance Study (FIS): A report that includes an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones,

and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMS.)

Flood Zone: A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

Floodplain (or Flood Prone Area): Any land area susceptible to being inundated by water from any source.

Floodplain Administrator: The individual appointed to administer and enforce the floodplain management regulations. The Inspections Director or designee serves as the Floodplain Administrator pursuant to paragraph 3.21.2, Floodplain Administrator.

Floodplain Development Permit: means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

Floodplain Management: means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Management Regulations: means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floodway Fringe: The portion of the Special Flood Hazard Area that is outside of the Floodway.

Floor Area: Area of enclosed (i.e. roofed and walled) built space, excluding any unfinished area used exclusively for storage or mechanical elements.

Floor Area Ratio (FAR): The ratio of building area to parcel area. Floor area ratio is a measure of nonresidential land use intensity.

Forestry: The act of growing trees, harvesting timber or replanting trees in accordance with a management plan endorsed by the NC Division of Forest Resources.

Freeboard: The height added to the Base Flood Elevation (BFE) or the future conditions flood elevation to account for watershed development as well as limitations of the engineering methodologies for the determination of flood elevations. The Base Flood Elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation."

Freeway: A multi-lane, controlled or limited access major road connecting this region, major activity centers or major roads with other regions, major activity centers or major roads. It is designed to accommodate large traffic volumes at high speeds. Such facilities may be part of the Interstate, Federal, or State primary highway system and are identified on the adopted Thoroughfare Plan.

Frontage: The dimension of a property that is adjacent to a street.

Future Conditions Flood: The flood having a one (1) percent chance of being equaled or exceeded in any given year based on future conditions hydrology.

Future Conditions Flood Elevation: A determination of the water surface elevations of the one percent (1%) annual chance flood based on future conditions hydrology as published in the Flood Insurance Study. This elevation, when combined with the freeboard, establishes the "Regulatory Flood Protection Elevation" in Future Conditions Flood Hazard Areas.

Future Conditions Flood Hazard Area: The land area that would be inundated by the one percent (1%) annual chance flood based on future conditions hydrology as determined in paragraph 8.4.2, Applicability, of this ordinance.

Future Conditions Hydrology: The flood discharges associated with projected land-use conditions based on Durham City's and County's zoning maps or comprehensive land-use plans and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway such as bridge and culvert construction, fill, and excavation. Future conditions flood discharges are published in the Flood Insurance Study.

Geographic Search Ring: The area within which a wireless support structure or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Glazing: The portion of the building facade or external materials which are composed of glass. Glazing is used in transparency calculations and includes the glass used in the doors and windows of the building.

Golf Course: An area laid out for playing golf, which can include some or all of the following accessory facilities: clubhouses, putting greens, swimming and tennis facilities, concessions for food and supplies. Driving ranges can also be included, unless specifically excluded by provisions of this Ordinance. This definition does not include Par 3 or miniature golf.

Grading: A land disturbing activity that modifies the contours of the land.

Grandfathering: An exemption based on previously existing circumstances.

Green Roof: A vegetated roof treatment that has a layer of soil and a drainage system and is planted with vegetation.

Gross Vehicle Weight (GVW): The weight of a vehicle and its equipment with a full tank of fuel, a full maximum load of cargo, and passengers.

Ground Cover: Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

Group Home: A dwelling that provides room and board for more than six, but less than 13 individuals who as a result of age, illness, handicap or some specialized program, require personalized services or a supervised living arrangement in order to assure their safety and comfort. Additional requirements may be imposed by the North Carolina Building Code.

Guest Room: A room or suite used as living accommodations for one or more paying visitors.

Guyed: A style of antenna-supporting structure consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is

attached to a foundation and supported by a series of guy wires that are connected to anchors placed in the ground or on a building.

Handoff Candidate: A wireless facility that receives call transference from another particular wireless facility, usually located in an adjacent first "tier" surrounding the initial wireless facility.

Hazardous Material: Materials, or mixtures containing those materials, which pose a physical, environmental or health hazard by virtue of their carcinogenic, corrosive, highly toxic, irritant, sensitizing or toxic properties as defined in 29 CFR 1910.1200. Included in this definition are materials included in EPA's most recent Priority Pollutants List and substances which are regulated, or caused to be regulated, under provisions of the Resource Conservation and Recovery Act (RCRA); the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA); the Superfund Amendments and Reauthorization Act (SARA); or any subsequent amendments of these Acts. Hazardous materials shall include hazardous wastes, which are the byproducts resulting from the use of hazardous materials, materials which have been used to clean up spills of hazardous materials, and hazardous materials which have reached their shelf-life or have been used or contaminated. Also included in this definition are hazardous wastes regulated, or caused to be regulated by the Resource Conservation and Recovery Act (40 CFR 261, Subpart C and Subpart B).

Hazardous Waste Facility: means, as defined in NCGS Article 9 of Chapter 130A, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Heavy Equipment: Vehicles such as buses, tow trucks, furniture trucks, fuel trucks, refrigerated trucks, dump trucks, or cement mixers; vehicles with a Class of 7 or above that would typically have a Gross Vehicle Weight (GVW) of at least 13 tons, or any construction equipment, or, within City limits, any farm equipment (except in the RS-20 or RR districts).

Heliport: An area of land, water, or structural surface designed, used, or intended to be used for landing or takeoff of passengers or cargo from or by helicopters, plus accessory buildings and uses.

Helistop: An area of land, water, or structural surface designed, used, or intended to be used for landing or takeoff of passengers or cargo from or by helicopters, without any appurtenant area, facility, structure or building designed, used, or intended for use in the operation or maintenance of the helistop or in the service or maintenance of helicopters.

High Density Option: One of two approaches available for development in Watershed Protection Overlays. The high density option relies on impervious surface limits and engineered stormwater controls to minimize risk of water pollution.

High Quality Water (HQP) Zones: Areas in the coastal counties that are within 575 feet of high quality waters and, for the remainder of the state, areas that are within one mile and drain to HQWs.

High Quality Waters: Those classified as such in Title 15A NCAC 2B.0101(e)(5) general procedures, which is incorporated herein by reference to include further amendments pursuant to NCGS § 150b-14(c).

Highest Adjacent Grade: The highest natural elevation of the ground surface, prior to construction next to the proposed walls of the structure.

Historic Structure: Any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the

Secretary to qualify as a registered historic district; (c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or (d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program.” Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Natural and Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Home Occupation: Any occupation conducted by the inhabitants of the dwelling, which is secondary to the main use as a dwelling, and causes no change in the exterior of the dwelling.

Hospital: An institution providing human health services primarily for in-patient medical and surgical care for the physically or mentally sick and injured and including related support facilities such as laboratories, out-patient departments, staff offices, food services, and gift shop.

Hotel or Motel: An establishment containing 10 or more guest rooms, for short term guests, and containing registration facilities, on-site management, cleaning services and combined utilities, except for an Extended Stay Residence or Facility.

Impervious Surfaces: A surface composed of any material that impedes or prevents natural infiltration of water into the soil and qualifies as “built-upon area” as defined by NCGS 143-214.7, as amended.

Independent Living Facility: A facility consisting of a single building or group of buildings with one ownership and management in which the residents are persons at least 55 years of age, their spouses, and/or their surviving spouses, and with or without an on-site resident manager. Residents live in their own dwelling units. The facility maintains a common dining room and typically provides personal services such as transportation, banking, and/or a barber shop/hair salon; recreational activities and amenities; concierge services; and housekeeping for residents and their guests. Health maintenance services and/or treatment are not provided.

Initial Zoning Map Change: A zoning map change that establishes the City’s zoning authority over newly annexed territory, per NC General Statute 160A-360(f), or establishes the County’s zoning authority over newly relinquished territory, per NC General Statute 160A-360(f1).

Intermodulation Distortion: The preventable and avoidable results of the mixture of two certain and specific radio frequencies (3rd Order); or more certain or specific radio frequencies (5th Order), that creates at least one other unwanted, undesirable, and interfering radio frequency (3rd Order), or multiple other unwanted, undesirable, and interfering radio frequency signals (5th Order).

Internal Campus: All areas within the UC and UC-2 Districts that are not included within a transitional use area.

Inventory: See Durham Inventory.

Junk Vehicle: A vehicle which does not lawfully display a current license plate and which is partially dismantled or wrecked, or cannot operate under its own power.

Junk Yard: An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, or waste, or for operation and maintenance of a place of business for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor parts.

Kennel: An establishment engaged in boarding, breeding, buying, selling, grooming or training of pet animals.

Laboratory: A place where scientific studies are conducted, including testing, research, or analysis of a medical, chemical, physical, biological, mechanical, or electronic nature.

Lake or Natural Watercourse: Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land Disturbing Activity: Any use of land by any person in residential, industrial, educational, institutional or commercial development, and in highway and road construction and maintenance, that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. This includes borrow and waste disposal activity not regulated by the provisions of the Mining Act of 1971 or the Department of Health and Human Resources, Division of Health Services. Land disturbing activities over which the State has exclusive regulatory jurisdiction as provided in NCGS § 74-46 through 74-68, or NCGS § 113A-56 (a) shall not be included in this definition.

Landfill, Demolition: A facility for disposing of stumps, limbs, leaves, concrete, brick, wood, uncontaminated earth and other solid wastes resulting from construction, demolition or land clearing.

Landfill, Sanitary: A facility where waste material and refuse is placed in the ground in layers and covered with earth or some other suitable material each work day.

Lattice: A tapered style of antenna-supporting structure that consists of vertical and horizontal supports with multiple legs and cross-bracing, and metal crossed strips or bars to support antennas.

Letter of Map Amendment (LOMA): An official determination by FEMA that a property has been inadvertently included in a Special Flood Hazard Area as shown on an effective FIRM and is not subject to inundation by the one percent annual chance flood. Generally, the property is located on natural high ground at or above the BFE or on fill placed prior to the effective date of the first NFIP map designating the property as within a Special Flood Hazard Area. Limitations of map scale and development of topographic data more accurately reflecting the existing ground elevation at the time the maps were prepared are the two most common bases for LOMA requests.

Letter of Map Change (LOMC): A term used to inclusively define a FEMA issued letter related to a Flood Insurance Rate Map or Flood Hazard Boundary Map using one or more of the following processes: Letter of Map Amendment, Letter of Map Revision, as well as conditional Letter of Map Amendment and conditional Letter of Map Revision.

Letter of Map Revision (LOMR): A letter issued by the Federal Emergency Management Agency that confirms amendment of a special flood hard area boundary.

Level of Service: A measure of capacity per unit of demand for a public service or facility. An indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility.

Linear Block: That property abutting one side of a street between the two nearest intersecting or intercepting streets, natural barrier, or between such cross-street and the end of a dead end street or cul-de-sac. Where a street curves so that any two adjacent 100 foot chords thereof

form an angle of 120 degrees or less, measured on the lot side, such curve shall be construed as an intersecting street.

Livestock: Livestock includes but is not limited to poultry and hooved animals such as cattle, horses, goats, sheep and swine; however, swine commonly referred to as Miniature, Vietnamese or Oriental Pot-Bellied pigs (*Sus scroda vittatus*) shall not be considered livestock if the animals are no more than 18 inches in height, the owner has proof of registry with the International Potbellied Pig Registry (IPPR), and no more than two are kept at any household.

Loading Area: A space used to transfer goods and material between vehicles and a building or lot.

Local Street: Streets less than one mile in length that do not connect thoroughfares, or major traffic generators, and typically do not collect traffic from more than 100 dwelling units; or loop streets less than 2,500 feet in length.

Lot, Corner: A lot abutting two or more streets at their intersection.

Lot, Double-Frontage: A lot, other than a corner lot, with frontage on more than one street.

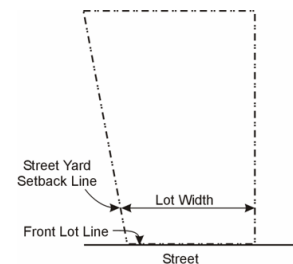
Lot, Flag: An irregularly shaped lot which has an appendage or extension which does not meet the lot width requirements of the district at the street.

Lot Area: The total area within the lot lines of a platted lot.

Lot of Record: Also called “lot” or “parcel”, a parcel of land described by metes and bounds, or otherwise delineated by property boundary dimensions, on a plat recorded in the office of the appropriate Register of Deeds.

Lot, Through: See “Lot, Double-Frontage.”

Lot Width: The distance between the side lot lines, measured along a straight line parallel to the front property line or parallel to the chord of the front property line at the street yard setback line or at the building line on flag lots or gore shape lots.



Lowest Adjacent Grade (LAG): means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Low Density Option: One of two approaches available for development in Watershed Protection Overlays that relies on non-structural means, specifically lower intensity limits, to minimize the risk of water pollution.

Mailed Notice: Either surface mail or e-mail, unless one is explicitly directed.

Major Local Street: Streets less than one mile in length that do not connect thoroughfares or major traffic generators that typically do not collect traffic from more than 250 dwelling units; or a loop street less than 2,500 feet in length.

Manufactured Home (Class A, B, C): A residential unit that is not constructed in accordance with the standards set forth in the North Carolina State Building Code and is composed of one or more components, each of which was substantially assembled in a manufacturing plant designed to be transported to a site on its own chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. Within the text of this Ordinance, the term “manufactured home” shall only apply to Class A or B manufactured homes unless explicitly stated to include Class C manufactured homes. Class A and Class B are manufactured homes constructed after July 1, 1976 that meet or exceed the construction standards promulgated by the US Department of Housing and Urban Development that were in effect at the time of construction. Class C manufactured homes are manufactured homes that do not meet the definition of a Class A or Class B manufactured home. The term “manufactured home” does not include “recreational vehicles.”

Manufactured Home Park: A residential development under single ownership with sites for manufactured homes of Class A or B and various other facilities for the residents of the development.

Manufactured Home Park or Manufactured Home Subdivision: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Marina: A dock or basin providing securing moorings for boats and supplies, boat repair or other facilities.

Market Value: The building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value can be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

Marquee: A permanent canopy projecting over an entrance.

Mass Grading: The grading of four acres or more at one time to prepare one or more lot(s) for construction.

Mausoleum: A building with places for entombment of the dead above ground.

Mean Sea Level: The National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988 or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

Microbrewery: A brewery that produces less than 15,000 US barrels (460,000 US gallons) per year.

Micro-distillery: A distillery that produces no more than 50,000 US gallons per year. Other typical names include, but are not limited to, “craft distillery,” “small batch distillery,” and “artisan distillery.”

Mining: The development or extraction of a mineral from its natural occurrences on affected land.

Mitigation (for wireless communications facilities): A modification to increase the height of an existing antenna support structure, or to improve the structural integrity of an existing support structure, or to replace or remove one or more antenna support structure(s) located in close proximity to a

proposed new antenna support structure in order to encourage compliance with the Ordinance or improve aesthetics or functionality of the overall wireless network.

Mixed Use: A development that includes both residential and nonresidential uses as principal uses on the same development site. See paragraph 4.4.5 , Mixed Use, and paragraph 6.11.7, Mixed Use (MU).

Modular Unit or Modular House: A factory-fabricated, transportable building or dwelling in compliance with the North Carolina Building Code, that is designed to be used by itself or to be incorporated with other units into a structure that will be a finished building on a permanent location on a permanent foundation. A modular unit shall not be considered a or manufactured home for the purpose of this Ordinance.

Monopine or Faux Tree: A type of freestanding, wireless communication facility that is designed to resemble a tree. The support structure is attached to a foundation and is designed to support itself without the use of guy wires or other stabilization devices.

Monopole: A style of wireless support structure (tower) for a freestanding, wireless communication facility that is composed of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of tower is designed to support itself without the use of guy wires or other stabilization devices, with a foundation that rests on or in the ground. Antennas and associated cables are not typically concealed within the shaft of the structure.

Multifamily: A residential use consisting of at least three dwelling units. As described in Sec. 7.1, Housing Types, includes: townhouse; multiplex; or apartment.

Multiplex: A building containing three or four individual dwellings with separate cooking facilities and toilet facilities for each dwelling.

Museums: Establishments for the display of art or historic or science objects.

Natural Erosion: The wearing away of the earth's surface by water, wind or other natural agents under natural environmental conditions undisturbed by man.

Natural Inventory: See Durham Inventory.

New Construction: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, structures for which the “start of construction” commenced on or after the effective date of the original version of the community’s Flood Damage Prevention Ordinance and includes any subsequent improvements to such structures.

Night Club: An establishment that stays open after 10:00 p.m. on weekends or on more than an occasional basis that offers food and beverages or entertainment or amusements. This definition includes but is not limited to establishments that serve beverages to persons aged 21 and older, dance halls, discotheques, and similar establishments. Excluded from this definition are restaurants that meet both the requirements established by definition in this Ordinance and in NCGS § 18B-1000(6), adult establishments, retail stores, convenience stores, clubs used by nonprofit organizations, lodges used by nonprofit organizations, theaters, health athletic facilities, and other indoor recreation uses where the serving of food or alcohol is accessory to the primary use.

Non-Encroachment Area: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

Non-Encroachment Area Fringe: The area within the special flood hazard area that is adjacent to, but not within, the non-encroachment area and is within the 100 year floodplain and is inundated by the base flood.

Noncommercial Sign: A sign which contains no message, statement, or expression related to commercial interests. Noncommercial signs include, but are not limited to, signs expressing political views, religious views, or information about and/or announcements of non-profit organizations related to their tax-exempt status.

Nuclear Material: Any natural or man-made material which undergoes radioactive decay, during which process it releases energy in the form of ionizing radiation; this also includes any mixture of materials which contains nuclear material.

Obstruction: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

Office: A room, group of rooms, or building whose primary use is the conduct of a business, professional service, or governmental activity of a non-retail nature; including administration, record keeping, clerical work, and similar functions. This definition is not meant to include manufacturing, processing, repair, or storage of materials or products.

Opacity: The surface area of a fence, wall or buffer that is impenetrable to light when viewed perpendicularly to the plane of the fence, wall or buffer.

Open Space: Areas of a development that allow for light, air, wildlife habitat, and for scenic and recreational use. Also included are areas designed to enhance the privacy or general appearance of a development. Private open space is open space that is owned by a corporation, individual, or house owners association. Public open space is open space owned by a governmental jurisdiction.

Orientation: The directional placement of a structure or element in relation to its surroundings, the street and other structures.

Outparcel: Individual retail sites in a retail center that, when combined, are less than the square footage of the attached retail spaces which form the majority of the square footage of the center.

Owner: Any person having charge of any real property according to the records held by the Register of Deeds.

Parcel: See "Lot of record."

Parent: means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

Park and Ride: Motor vehicle parking spaces to be occupied by vehicles left by individuals who transferred to other modes of transportation for the remainder of their trip to an off-site location (for example, a driver who transfers from a car to a bus, train, or carpool for the remainder of the trip to work or school).

Parking Block: A wheel stop.

Parking Lot: An area of land where vehicles are kept on a daily, overnight, or temporary basis; not to include the storage of wrecked or abandoned vehicles, vehicle parts, or the repair of vehicles.

Parking Space: A designated off-street area designed to accommodate the parking of one vehicle.

Passive Recreation: Recreational activities that do not require a developed site. This includes such activities as trails for walking, hiking, and horseback riding; and areas for picnicking.

Pedestrian Mall: A public or private, improved area intended for public pedestrian and non-motor use that is permanently preserved for such use through limited easements or rights of enforcement granted to the City, or other similar legal techniques.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Personal Wireless Service: Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in the *Telecommunications Act of 1996*.

Pervious Paving: Surface improvements such as interlocking concrete paving blocks, brick pavers, grid pavers, or other similar improvements which permit the infiltration of water through the improved surface. Gravel shall not be considered a pervious paving surface.

Phase of Grading: One of two types of grading, rough or fine.

Philanthropic Institution: An organization distributing or supported by funds set aside for humanitarian purposes.

Pilot Plant: A building or operation in which processes planned for use in production elsewhere can be developed and/or tested, but not including the production of any goods on the premises primarily for sale or for use in production operations.

Place of Worship: A building primarily used by a non-profit organization for organized religious services and supporting uses.

Plant Unit: The measure of plant material required for 100 linear feet of buffer area to meet landscape requirements and ensure variety in buffer plantings.

Plat: A map, chart or plan of a tract or parcel of land which is to be or which has been, subdivided.

Playground: A constructed area designated for play and recreation typically for children, surfaced with material recommended by the most current safety handbook published by the U.S. Consumer Product Safety Commission, and consisting of play structures and equipment, including but not limited to, slides, swings, rockers, and climbing apparatus.

Podium: The initial portion of a building, beginning at ground level, specifically designed and articulated as the base or plinth of the building, above which the building steps back to greater height. Building podiums can vary from less than one story to several stories in height.

Podium Height: The initial height that a building can reach at the build-to line before upper story step-backs are required in a design district.

Porte Cochere: A roofed structure extending from the entrance of a building over an adjacent driveway and sheltering those getting in or out of vehicles.

Post-FIRM: Construction or other development which started on or after the effective date of the initial Flood Insurance Rate Map for the area.

Pre-FIRM: Construction or other development which started before the effective date of the initial Flood Insurance Rate Map for the area.

Preliminary Plat: A map indicating the proposed layout of a development and related information that is submitted for preliminary review.

Principal Use or Primary Use: The main use of land or buildings as opposed to a secondary or accessory use.

Principally Above Ground: At least 51 percent of the actual cash value of the structure is above ground.

Producer: A person or entity that makes a food or beverage, raises or produces farm products, or creates value-added farm products from farm products raised or produced on land that the person or entity farms.

Property Owner or Owner: The owner of a parcel of land as shown on the Durham County tax records.

Protective cover: See "ground cover."

Public Antenna-Supporting Structure: An antenna-supporting structure, appurtenances, equipment enclosures, and all associated ancillary structures used by a public body or public utility for the purposes of transmission and/or reception of wireless communication signals associated with but not limited to: public education, parks and recreation, fire and police protection, public works, and general government.

Public Art: A work of art in any medium that has been planned and executed with the specific intention of being sited or staged in the physical public domain, usually outdoors and publicly accessible.

Public Facility: A building or area owned or used by any department or branch of the Durham City Government, Durham County Government, the State of North Carolina, or the Federal Government.

Public Park or Playground: A park or playground available to the general public.

Public Safety and/or Nuisance: When used in reference to Sec. 3.21, Floodplain Development Permit and Sec. 8.4, Floodplain and Flood Damage Protection Standards, means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Public Safety Communications Equipment: All communications equipment utilized by the City/County of Durham for the purpose of operation in the interest of the safety of the citizens of Durham and operating within the frequency range of 806 MHz and 1,000 MHz and future spectrum allocations at the direction of the FCC.

Public Utility: A business or service that provides the public with electricity, gas, water and sewer service, telephone or cable television service.

Radio Frequency Emissions: Any electromagnetic radiation or other communications signal emitted from an antenna or antenna-related equipment on the ground, antenna-supporting structure, building, or other vertical projection.

Receiving Watercourse: A lake, natural watercourse or other natural or manmade area into which stormwater runoff flows from a land-disturbing activity.

Recreational Vehicle: A vehicle, which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently

towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Recreational Vehicle (RV) Park: Land used or intended to be used, let, or rented for occupancy by vacationing transient campers traveling by automobile or otherwise, or for occupancy by tents, or other movable or temporary sleeping quarters of any kind, together with automobile parking spaces and incidental utility structures and facilities required and provided in connection with the use. This definition shall not include trailer sales lots where unoccupied trailers are parked for inspection and sale.

Recycling Center: A building or an area where the primary activity is the separation of materials prior to shipment for remanufacture into new materials. This shall not include junkyards or wrecking yards.

Recycling Drop-Off Site: A site providing containers for the collection of recyclable materials, typically an accessory use. Recyclable materials are transported from the drop off site to another location for processing.

Reference Level: The top of the lowest floor for structures within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas designated as Zone AE, A, A99, AO, or X (Future).

Regulatory Flood Protection Elevation: The elevation above mean sea level to which the reference level of all structures and other development located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas must be protected.

1. In Special Flood Hazard Areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard.
2. In Special Flood Hazard Areas where no BFE has been established, this elevation shall be at least five feet above the highest adjacent grade.
3. In Future Conditions Flood Hazard Areas this elevation shall be the Future Conditions Flood Elevation plus two feet of freeboard.

Remedy a Violation: To bring a structure or other development into compliance with the requirements of this ordinance and, when appropriate, State requirements.

Repair Shop: A structure or area where the principal activity is the repair of equipment, and which is conducted in a totally enclosed building. This does not include vehicle repair.

Repetitive Loss: Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

Reservation: The withholding by a private entity of specific real estate from development pending acquisition by a public agency.

Residential District: Any zoning district with the "R" designation, (RR, RS-20, etc.), including the PDR District.

Residential Street: Streets less than one mile in length that do not connect thoroughfares or major traffic generators that typically do not collect traffic from more than 25 dwelling units; or a loop street less than 2,500 feet in length.

Restaurant: An establishment where food and drink are served as a principal activity, including the dispensing of food or drink to patrons who remain in vehicles.

Retail Stores and Shops: Establishments selling goods to the public for consumption but not for resale, usually in small quantities, as well as services incidental to the sale of these goods including the leasing or repairing of merchandise for public consumption.

Right-of-Way: A strip of land acquired by reservation, dedication, prescription or condemnation and intended to be occupied by a street, trail, or public utility.

Riverine: means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Roadside Stand: A structure (generally an open air structure) used for display and sale of products grown or produced on-site and the incidental sale of products from off-site. Sales are conducted on a temporary or seasonal basis.

Rooming House: A building other than a motel, hotel, bed and breakfast inn or boarding house, containing at least four, but not more than nine guest rooms. A rooming house shall not contain kitchen facilities within the guest rooms, and no meals are served to guests.

Root Protection Zone: The permeable land area around the base of a tree in which disturbances are prohibited in order to protect the roots of a tree and aid the trees survival. Root protection zones are measured as the greater of:

- A. Six-foot radius around the tree; or
- B. One-foot radius for every inch of dbh.

Rural Village: An area delineated on the Future Land Use Map, within the Rural Tier, that can include residential, commercial, office, institutional, and open space/recreation land uses.

Runoff: Water from precipitation that flows off a property.

Salvage Yard: Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

Satellite Dish Antenna(s) (Satellite Earth Stations): A single or group of satellite parabolic (or dish) antennas. These dishes are mounted to a supporting device that may be a pole or truss assembly attached to a foundation in the ground, or in some other configuration. A satellite earth station may include the associated separate equipment enclosures necessary for the transmission or reception of wireless communications signals with satellites.

School, Public or Private: A public or private institution offering a curriculum of education authorized by the State of North Carolina giving regular instruction at the primary, secondary level, or a school for the mentally or physically handicapped. Included in this definition are preschool programs integrated into the curriculum of a public or private school or that does not require daycare licensing by the State. However, this definition does not include day care facilities, preschools operating independent of a public or private school, individual instruction, or classes in a specialized subject.

School, Trade or Business: An institution offering instruction beyond high school level with a course of study in vocational, technical or other special subjects;

Screening: The use of plant materials and other landscape or architectural elements used separately or in combination to obscure views.

Sediment: Solid particulate matter, both mineral and organic, that has been, or is being, transported by water, air, gravity or ice from its site of origin.

Sedimentation: The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

Setback: The minimum distance between a property line and a building or structure. Unless specifically noted in the text, ground level parking and security gatehouses can be located within the setback area.

Shopping Center: A group of retail businesses developed under a uniform development scheme and served by common off-street parking facilities.

Sign: Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, structures, designs, trade names, or trade marks by which anything is made known such as are used to designate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or products, which are legible from any public street or adjacent property and used to attract attention. This definition includes the structure or the face on which a sign message is displayed. For the purposes of this Ordinance, this definition shall not include "trade dress" i.e.: architectural features identified with a product or business, as a sign.

Sign Support or Bracing: The materials used to support and attach a sign to the ground, building, or other fixed location.

Siltation: Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

Single-Family: A residential use consisting of one dwelling unit per lot of record. As described in Sec. 7.1, Housing Types, includes: single-family detached house; zero lot line house; traditional house; patio house; or semi-attached house. Not to include manufactured housing.

Single-Loaded Street: A roadway serving property (street yard) on one side only with no need for access on the other side.

Site Area: The minimum area required for a particular type of development. The site may then be divided into smaller lots.

Site Plan: An accurately scaled development plan that shows existing conditions on a site as well as depicting details of proposed development.

Solid Waste Disposal Facility: Means, as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

Solid Waste Disposal Site: Means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Solid Waste Facilities: Stationary solid waste collection containers, yard waste containers, recycling containers and roll-out containers for the above.

Special Flood Hazard Area (SFHA) or Area of Special Flood Hazard: The land in the floodplain subject to a one percent or greater chance of being flooded in any given year based on current conditions hydrology.

Specimen Tree: Any evergreen canopy tree 18 inches dbh or greater, any deciduous canopy tree 12 inches dbh or greater and any understory tree (deciduous or evergreen) eight inches dbh or greater, except any tree listed as a non-native invasive plant by the US Forest Service or prohibited pursuant to in the *Landscape Manual* for Durham, North Carolina, also referred to as the *Landscape Manual*.

Start of Construction: Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition

placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Storefront Window System: An architectural wall assembly of large glass panes framed in relatively thin metal members and typically used at the ground level of commercial buildings.

Storm Drainage Facilities: The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater: The flow of water which results from precipitation and which occurs immediately following rainfall or snowmelt.

Stormwater Runoff: The direct runoff of water resulting from precipitation in any form.

Story: The horizontal division of a building made up of the space between two successive floors, or a floor and the roof.

Stream: means a body of concentrated flowing water in a natural low area or natural channel on the land surface.

Stream Buffer: A natural or vegetated area adjacent to a stream through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for the infiltration of runoff and filtering of pollutants.

Stream, Intermittent: Except under Sec. 8.5, Riparian Buffer Protection Standards, a watercourse that collects surface runoff and is shown as a dashed blue line on the most recent United States Geologic Survey (USGS) 7½-minute quadrangle topographic maps, is shown as an intermittent stream on the most recent US Department of Agriculture (USDA) Soil Survey, or is shown as an intermittent stream on the Natural Resource Conservation Service (NRCS) maps.

Stream, Perennial: Except under Sec. 8.5, Riparian Buffer Protection Standards, a watercourse that collects surface runoff and is shown as a solid blue line on the most recent USGS 7½-minute quadrangle topographic maps, is shown as a perennial stream on maps in the most recent US Department of Agriculture (USDA) Soil Survey, or is shown as a perennial stream on the Natural Resource Conservation Service (NRCS) maps.

Street Frontage: The boundary of a property adjacent to one side of a street.

Street Width: The horizontal distance between the side lines of a street, measured at right angles to the side lines.

Street, Private: An area intended for local vehicular traffic, owned and maintained by a private corporation, individual, or group of individuals.

Street, Public: An area for vehicular traffic that is dedicated to or maintained by a public agency.

Streetscape: The area between build-to lines of opposing properties intended for pedestrian and vehicular use, which may include public right-of-way and private property.

Strip Commercial: Intense commercial development extending along a roadway at a shallow depth along that roadway. It is typically characterized by multiple curb-cuts, unconnected vehicular use areas and a proliferation of signs.

Structure: A walled and roofed building that is principally above ground; a manufactured home; vertical projections meeting the definition of antenna-supporting or wireless support structures; or when used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, a gas or liquid storage tank that is principally above ground.

Stub Out: The extension of a street to an external property line to facilitate future roadway connection and reduce traffic impacts on the road network.

Subsidiary: An affiliate that is directly or indirectly through one or more intermediaries, controlled by another person.

Subdivisions: All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) or any division of land involving the dedication of a new street or a change in existing streets.

Substantial Change: In regards to wireless communication facilities, a modification that substantially changes the physical dimensions of an existing tower or base station if it meets any of the criteria detailed in the *FCC Report and Order FCC14-153*, or as amended.

Substantial Damage: Damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

Substantial Improvement: Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either: (1) any project or improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

Substantial Quantities: An amount of hazardous materials equal to or exceeding the Threshold Planning Quantities listed in the provisions of the Resource Conservation and Recovery Act (RCRA); the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA); the Superfund Amendments and Reauthorization Act (SARA); or any subsequent amendments of these Acts. Where no Threshold Planning Quantities have been identified for a particular material, the amount considered to be a substantial quantity shall be determined by the Director of Emergency Management or the Durham County Fire Marshall.

Support Equipment (WCF): Any and all devices utilized to attach or hold antennas, feed lines, or any related equipment to a WCF.

Telecommuting: A work arrangement in which an employee uses technology to perform assigned duties at home or at another site away from the traditional work site during some or all of regularly scheduled work hours, reducing or eliminating the employee's commute or travel to and from the traditional work site.

Ten-Year Storm: The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest, under average antecedent wetness conditions.

Twenty-Five Year Storm: The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

Theater: A building or structure which contains an assembly hall for the performing arts and/or for the showing of motion pictures.

Thoroughfare, Major: Major streets, excluding freeways but not excluding limited access facilities, that provide for the expeditious movement of large volumes of traffic within and through the urban area. These facilities are shown on the adopted Thoroughfare Plan.

Thoroughfare, Minor: Streets that perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system. Such streets can be used to supplement the major thoroughfare system by facilitating minor through movements and can also serve abutting property. They are identified on the adopted Thoroughfare Plan.

Tool Repair Shop: A structure or area where the principal activity is the repair of equipment, and which is conducted in a totally enclosed building. Vehicle repairs are a separate definition.

Towers for Transmitting and Receiving Electronic Signals: Structures whose principal function is to support communication antenna(s).

Townhouse: A building made up of three or more attached dwellings units when the units are lined up in a row and share side walls.

Tract: Contiguous land under one ownership or under multiple ownership either developed as a single unit or recorded as a single unit.

Transfer Station: A facility where waste materials from residences, commercial and industrial establishments are transferred to vehicles which will take the materials to a landfill or other disposal site.

Two-Family: A residential use consisting of two individual dwelling units on a single lot of record. This definition does not include a single-family dwelling with an accessory dwelling unit.

Ultimate Right-Of-Way: A line running more or less parallel to the centerline of certain existing or proposed streets for the purpose of determining future width as established by the officially adopted Thoroughfare Plan.

Uncovered: The removal of ground cover from, on, or above the soil surface.

Undertaken: The initiating of any activity, or phase of activity, which results, or will result, in a change in the ground cover or topography of a tract of land.

Unipole: A freestanding, wireless communication facility where the wireless support structure (tower) is composed of a single shaft usually made up of two or more hollow sections that are in turn attached to a foundation. This type of tower is designed to support itself without the use of guy wires or other stabilization devices and the foundation rests on or in the ground. All antennas and associated components mounted onto the structure are completely concealed within the shaft of the structure.

University or College: An institution other than a trade school that provides full-time or part-time education beyond high school.

Upper Story Step-backs: The articulation of upper story height by recessing the building facades back from the build-to line to allow light and air access to street level.

Use: The purpose for which a building, structure, or area of land may be arranged or occupied or the activity conducted or proposed in a building, structure, or on an area of land.

Value-Added Farm Product: Any product processed by a producer from a farm product, such as, but not limited to, baked goods, jams, jellies, canned vegetables, dried fruit, syrups, salsa, salad dressings, flours, coffee, smoked or canned meat or fish, sausages, yogurt, cheese, or prepared foods.

Variance: A grant of relief to a person from the requirements of this Ordinance which permits construction or use in a manner otherwise prohibited by this Ordinance where specific enforcement would result in unnecessary hardship.

Vehicle Repair Shops: Buildings and premises where mechanical work, servicing, and repair of motor vehicles is conducted as the primary activity. Excluded from this definition are dwellings where not more than 2 vehicles owned by the lawful residents of the dwelling are repaired on-site.

Vehicle Service: Buildings and premises for uses such as alignment shops, auto body shops, auto paint facilities, auto upholstery shops, and towing service.

Vehicle Service, Limited: Buildings and premises for uses such as auto detailing, auto repair, battery sales and installation, fuel sales (other than with a convenience store), quick lubrication facilities, and tire sales and mounting.

Vehicle Storage Yard: A bulk and non-public holding facility for fleet vehicles, vehicles held for sale or repair, or the storage of operable or inoperable vehicles awaiting adjustment or settlement of insurance claims or motor vehicles that have been impounded by the police. No dismantling of vehicles is permitted.

Vehicles: All motorized vehicles as defined by the State of North Carolina Department of Motor Vehicles, including but not limited to: automobiles, trucks, buses, all terrain vehicles (ATVs) and motorcycles. This definition shall not include "Heavy Equipment" as defined elsewhere.

Velocity of Flow: The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Vested Rights: The right of property owner to develop according to the terms of an approved site specific development plan or building permit even if the zoning or zoning district requirements are changed prior to development.

Violation: The establishment, creation, expansion, alteration, occupation or maintenance of any use, land development activity, or structure, including but not limited to signs and buildings, that is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance.

Waste: As used in Sec. 12.10, Sedimentation and Erosion Control, surplus materials resulting from onsite construction and disposed of at other locations.

Water Surface Elevation (WSE): When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Water-Dependent Structure: A structure which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Watercourse: A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Watershed: All of the land area draining to a particular point on a water course or to a water body.

Way-Finding Signage Plan: A plan delineating unifying characteristics for way-finding signs associated within a development project or complex.

Way-Finding Sign: A sign designed to convey location and direction.

Wetlands: An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly as hydrophytic vegetation, as defined by responsible State or Federal agencies.

Wireless Communications: Any personal wireless service, which includes but is not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), unlicensed spectrum services utilizing Part 15 devices (i.e. wireless internet services) and paging.

Wireless Communication Facility (WCF): Any manned or unmanned location for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of one or more of the following components: a wireless facility, base station, equipment compound, and wireless support structure. Amateur wireless facilities, satellite dish antennas, and antenna-supporting structures, antennas and/or antenna arrays for TV/HDTV/AM/FM broadcasting transmission facilities shall be excluded from this definition.

Wireless Communication Facility, Attached: A wireless facility that is secured to an existing building with an accompanying pole or device which attaches it to the building and may be located either on the roof, inside, or outside of the existing building. An attached WCF can also be placed on utility poles, light poles, transmission towers, and other similar site features. An attached wireless communications facility is considered to be an accessory use to the existing principal use on a site.

Wireless Communications Facility, Concealed: A wireless facility, wireless support structure, and WCF equipment compound that is designed to be camouflaged or hidden. A concealed facility is camouflaged if designed to appear as, for example but not limited to a church steeple, windmill, bell tower, clock tower, cupola, light standard, flagpole, or tree.

Wireless Communication Facility Equipment Compound: An area, surrounding or near the base of a wireless support structure, consisting of components of a wireless facility not mounted on a wireless support structure.

Wireless Communication Facility, Freestanding: A WCF that is composed of a wireless support structure (tower) and associated wireless facilities.

Wireless Facility: Also known as “transmission equipment,” it is the set of equipment and network components including antennas, transmitters, receivers, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services; but exclusive of the underlying structure or tower, as described in the *FCC Report and Order FCC14-153*, as amended.

Wireless Support Structure: Also known as a “tower,” it is a structure that is solely designed and built for the primary purpose of supporting wireless facilities. A building or other fixed object not originally designed to support wireless facilities is not a wireless support structure.

Working Days: Days exclusive of Saturday, Sunday and (a) when used other than in reference to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control, legal holidays recognized by the City or County; or (b) when used in reference to Section 3.8 and 12.10, days during which weather conditions or soil conditions permit land-disturbing activity to be undertaken, as determined by the sedimentation and erosion control officer, or their designee, except where the context clearly indicates otherwise.

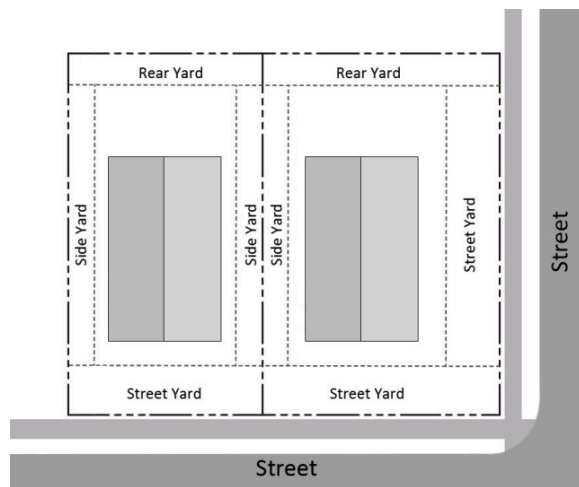
Yard: A space on the same lot with a building or group of buildings, which space lies between the building or group of buildings and the nearest lot line.

Yard, Rear: That portion of a yard between the required rear setback and the rear property line extending the full width of the lot between side lot lines. The rear yard width is measured perpendicular to the rear lot line. The rear yard shall be the yard on the opposing side of a street yard. No rear yard shall apply for triangular or pie-shaped lots where there is no rear property line.

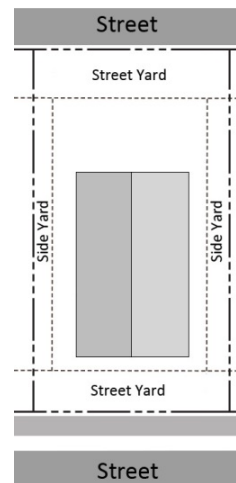
Yard, Side: That portion of a yard between the required side setback and the side lot line extending from the street yard to the rear yard. The side yard width is measured perpendicular to the side lot line.

Yard, Street: That portion of a yard extending between the edge of the street right-of-way (or easement, for private streets) and the required building placement; the portion of a lot adjoining a street as measured from the right-of-way. The street yard width is measured perpendicular to the street right-of-way. Corner lots and through lots shall be considered to have two street yards. A street yard does not exist adjacent to an alley.

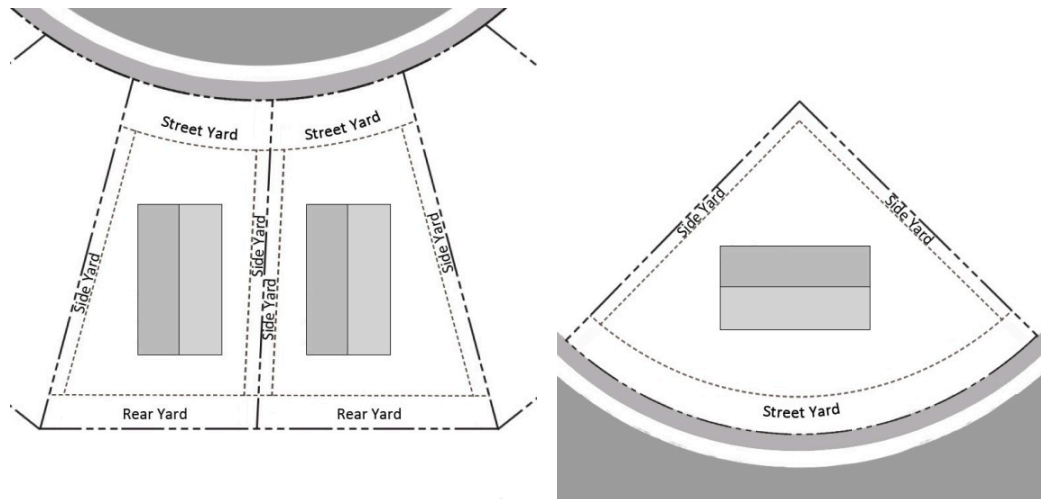
Interior and Corner Lot Diagram:



Double-Frontage Lot Diagram:



Irregular and Triangular Lot Diagrams:



Zero Lot Line: A detached dwelling unit positioned on one property line without any setback.